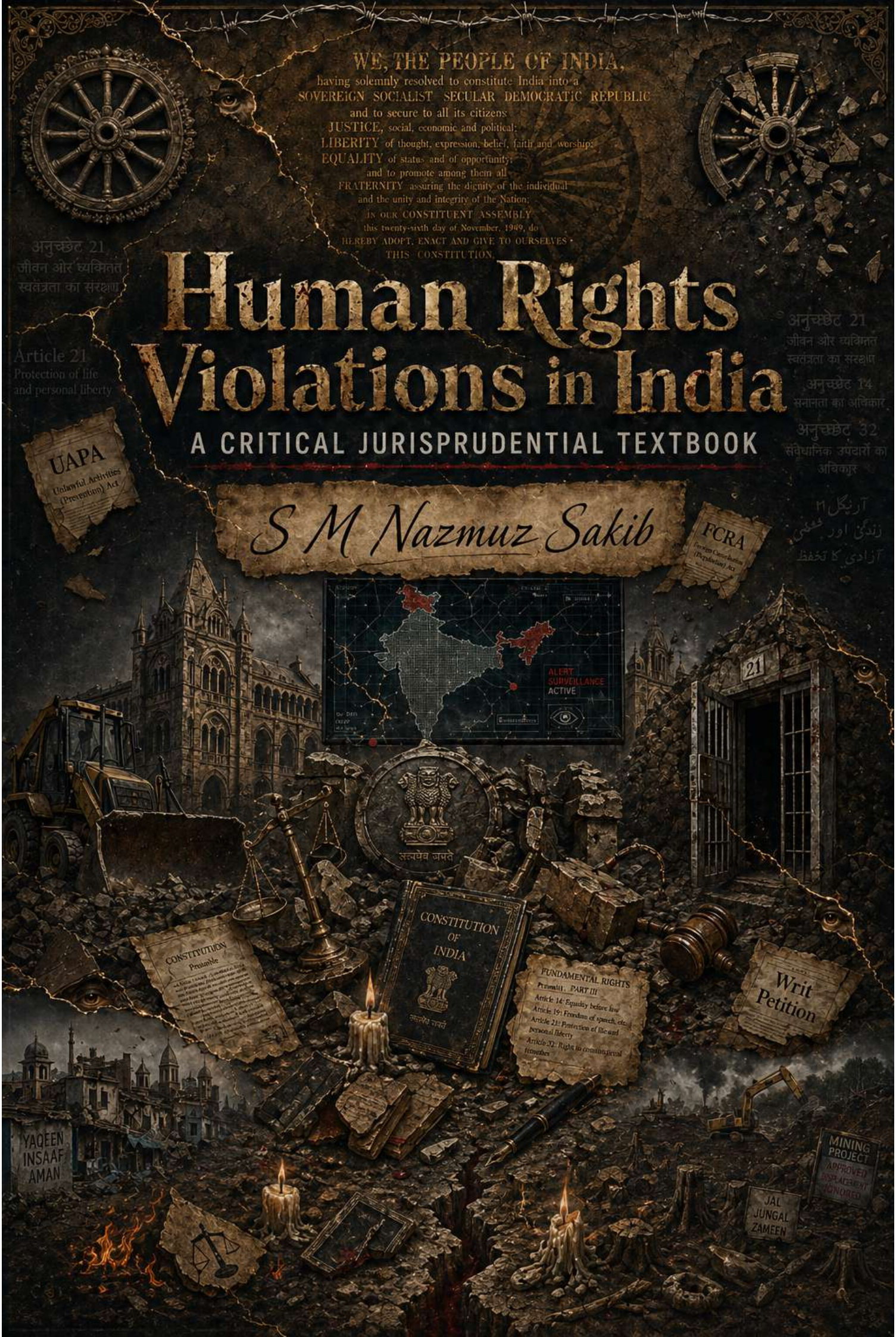
WE, THE PEOPLE OF INDIA,
having solemnly resolved to constitute India into a
SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC
and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the individual
and the unity and integrity of the Nation;
IN OUR CONSTITUENT ASSEMBLY
this twenty-sixth day of November, 1949, do
HEREBY ADOPT, ENACT AND GIVE TO OURSELVES
THIS CONSTITUTION.
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जीवन और व्यक्तिगत स्वतंत्रता का संरक्षण
Article 21
Protection of life and personal liberty
अनुच्छेद 21
जीवन और व्यक्तिगत स्वतंत्रता का संरक्षण
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زندگی اور شخصی آزادی کا تحفظ
Human Rights Violations in India
A CRITICAL JURISPRUDENTIAL TEXTBOOK
S M Nazmuz Sakib
UAPA
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सत्यमेव जयते
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Preamble
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Article 19: Freedom of speech, etc.
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Writ Petition
YAQEEN
INSAAF
AMAN
MINING PROJECT
APPROVED
DISPLACEMENT
IGNORED
JAL
JUNGAL
ZAMEEN

Human Rights Violations in India: A Critical Jurisprudential Textbook

S M Nazmuz Sakib

A Systematic, Philosophical, and Legal Analysis of State Power, Constitutional Failures, Regional Hegemony, and International Law

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Human Rights Violations in India: A Critical Jurisprudential Textbook
A Systematic, Philosophical, and Legal Analysis of State Power, Constitutional Failures, Regional Hegemony, and International Law

Fifteen-Part Complete Edition

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The views expressed herein are solely those of the author and do not necessarily reflect the views of any institution, organization, or government. The analysis is grounded in the conviction that intellectual honesty requires calling things by their right names, and that the truth of a legal system is found not in its written promises but in the lived experience of those it governs.

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"The greatest threat to a constitutional democracy is not the enemy at its gates, but the rot at its foundations, the slow erosion of rights in the name of order, the systematic dismantling of dignity in the name of security, and the comfortable silence of institutions that were built to speak." - Adapted from Justice V.R. Krishna Iyer, former Supreme Court of India

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PREFACE: A NOTE ON METHOD, PURPOSE, AND THE STAKES OF THIS WORK

This textbook is not a diplomatic document. It does not seek to balance criticism with appreciation. It does not offer the standard caveat that India is a democracy with working institutions and therefore deserves the benefit of the doubt. Those arguments have been made, repeatedly, by those who benefit from the continuation of a system that crushes millions of people beneath its weight. This work proceeds from the foundational belief that the truth of a legal system is found not in its written promises but in the lived experience of those it governs.

This is a work of jurisprudence, philosophy, legal history, political theory, and critical analysis. It engages with foundational texts in human rights law, engages with Indian constitutional doctrine, examines the decisions of courts, dissects legislation, tracks the testimony of survivors, and anchors everything in the broadest intellectual traditions of thought about power, law, and the human person. It reads H.L.A. Hart alongside Ambedkar, reads John Rawls alongside Arundhati Roy, and reads Ronald Dworkin alongside the testimonies of Dalit women who were raped by police officers and told that their complaint was defamatory.

The first part of this fifteen-part series covers the philosophical and jurisprudential groundwork. It establishes the theoretical language through which the rest of the textbook will operate. It excavates the historical formation of the Indian state and its relationship to power and rights. It examines the architecture of the Indian Constitution and identifies the structural weaknesses that have allowed violations to occur and persist within the very framework designed to prevent them. It introduces the major categories of violation that will be examined in depth in subsequent parts. And it establishes the relationship between India's domestic abuse of rights and its conduct as a regional power toward its neighbors.

A note on neutrality: this textbook does not claim neutrality in the sense of being indifferent to suffering. It claims, instead, intellectual honesty, which requires calling things by their right names. When a state enacts a law that gives soldiers the power to kill without judicial review, that is not a security measure. It is a license to murder with impunity. When a government systematically demolishes the homes of people from one religion while leaving those of another untouched, that is not urban development. It is religious persecution conducted through the machinery of municipal governance. When a dominant regional power manipulates river flows to extract concessions from a weaker neighbor, that is not hydrology. It is coercion.

This work calls these things what they are.

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PART ONE: THEORETICAL AND PHILOSOPHICAL FOUNDATIONS

CHAPTER ONE: UNDERSTANDING HUMAN RIGHTS AS A PHILOSOPHICAL AND LEGAL CATEGORY

1.1 The Concept of Human Rights: A Contested Inheritance

The concept of human rights is among the most contested, powerful, and productive ideas in the history of political thought. It is contested because it rests on foundational claims about the nature of the human person that different philosophical traditions resolve in incompatible ways. It is powerful because once those claims are accepted, even partially, they generate obligations of extraordinary scope and depth. It is productive because the very tensions within human rights discourse have generated a century of legal, political, and philosophical creativity.

The standard genealogy of human rights traces the idea from the natural law tradition of ancient Greece and Rome, through medieval Christian theology, through the Enlightenment theories of natural rights articulated by John Locke, Jean-Jacques Rousseau, and Immanuel Kant, through the revolutionary declarations of the late eighteenth century, to the emergence of modern international human rights law following the catastrophe of the Second World War. This genealogy, while real, is also contested. It tends to center the European experience and the European philosophical tradition, which has led scholars working in the traditions of postcolonial theory, feminist philosophy, and non-Western ethics to question whether the mainstream concept of human rights is itself a product of a particular historical moment and particular power relations that may make it inadequate to address the specific forms of violation that occur in postcolonial societies.

This question is not merely academic when applied to India. India was a colonial possession of Britain for nearly two hundred years. The legal system India inherited at independence was designed not to protect the rights of Indians but to facilitate the extraction of wealth from the subcontinent and the maintenance of British imperial authority. The transformation of that system into a rights-respecting constitutional democracy was the project of the Constitution framers. Whether that project succeeded, and in what respects it failed, is one of the central questions of this textbook.

The philosophical foundations of human rights can be organized around several major theoretical approaches. Understanding these approaches is essential to evaluating what India's legal system promises and what it delivers.

1.2 Natural Law Theory and Its Implications for Indian Rights Discourse

Natural law theory holds that there is a moral order embedded in the nature of reality or in human reason that generates obligations independent of any particular legal system. In this

tradition, rights are not gifts of the state; they are pre-political and pre-legal realities that the state is bound to recognize and protect. When the state violates them, it acts illegitimately regardless of whether its actions are authorized by positive law.

The most influential contemporary version of natural law theory in the rights context is associated with John Finnis, whose work "Natural Law and Natural Rights" published in 1980 argued that there are basic forms of human good, including life, knowledge, friendship, practical reasonableness, and religion, that define the conditions of human flourishing and that generate corresponding rights and duties. Finnis's approach is sophisticated because it does not derive rights from speculative metaphysics but from a careful analysis of what is involved in living a good human life.

When applied to India, the natural law tradition immediately raises disturbing questions. The caste system, which has shaped Indian society for millennia and continues to organize the life chances of hundreds of millions of people in the twenty-first century, is fundamentally incompatible with any serious natural law account of human rights. If every person has an inherent dignity that grounds corresponding rights, then a social system that assigns radically different rights, opportunities, and dignities to people based on the family into which they are born is a structural violation of that dignity at scale. The natural law tradition, consistently applied, demands not merely the formal prohibition of caste discrimination, which the Indian Constitution does include, but the active dismantling of the social, economic, psychological, and institutional structures through which caste domination is maintained. India has done neither.

More specifically, the Armed Forces Special Powers Act, which gives military personnel the power to kill on suspicion and shields them from all prosecution without prior government sanction, is impossible to reconcile with any serious natural law account of the right to life. The right to life is perhaps the most fundamental of all human rights precisely because without life no other rights can be exercised. A law that systematically exempts certain categories of state actors from accountability for killing directly contradicts the natural law claim that the right to life is foundational and non-derogable.

1.3 Legal Positivism and the Limits of Formal Rights Guarantees

Legal positivism, associated most influentially with H.L.A. Hart and Hans Kelsen, takes a different approach. Where natural law theory holds that the validity of law depends on its conformity with moral principles, legal positivism insists on the separation of law as it is from law as it ought to be. For Hart, the existence of a law is one thing; its moral assessment is another. A law can be valid in the sense of being properly enacted according to the rules of the legal system and still be morally monstrous.

This distinction is enormously important for understanding the Indian situation. India has some of the most impressive human rights guarantees of any constitutional democracy in the world. Part III of the Indian Constitution, which is titled Fundamental Rights, guarantees rights to equality, freedom, protection against exploitation, freedom of religion, cultural and educational rights, and constitutional remedies. The remedies provision, found in Article 32, was described by Ambedkar as the heart and soul of the Constitution. The Supreme Court has, over the

decades, interpreted these rights broadly and creatively, holding that the right to life under Article 21 includes the right to livelihood, to health, to education, to a clean environment, and to human dignity.

And yet, alongside this impressive formal structure, the reality on the ground for hundreds of millions of Indians, particularly Dalits, Muslims, Adivasis, women, LGBTQ+ people, and the rural poor, is one of systematic deprivation, exploitation, violence, and exclusion. How is this possible?

The legal positivist analysis provides part of the answer. The existence of rights in the constitutional text does not guarantee their enforcement. It does not even guarantee that the institutions through which enforcement must occur, the courts, the police, the bureaucracy, share the values that the rights embody. H.L.A. Hart's famous concept of the "rule of recognition," the master rule within any legal system that determines which norms count as law, can be used to illuminate this problem. If the rule of recognition in India's legal system is formally constitutional but the actually operating rules of the system privilege upper-caste Hindu interests, protect state actors from accountability, and treat the rights of minorities, Dalits, and the poor as secondary considerations, then the formal constitutional guarantees are systematically undermined by the operative legal culture.

Joseph Raz, developing Hart's positivism in a direction that is highly relevant here, argued that law is a form of authority, and that authority is legitimate only when following it would help those subject to it comply better with reasons that already apply to them than they would by acting on their own judgment. When the Indian state invokes law to suppress minority communities, demolish Muslim homes, detain journalists without charge, and shelter soldiers who kill civilians, it cannot claim legitimate authority in Raz's sense because its commands do not help people comply with the reasons that apply to them. Instead, they impose a dominant group's preferences on subordinate groups through coercive legal mechanisms.

The critique of legal positivism from critical legal studies scholars, who emerged in American law schools in the late 1970s and 1980s, is directly applicable to India. Duncan Kennedy, Roberto Unger, and their colleagues argued that law is not a neutral system of formal rules but a terrain of ideological conflict in which dominant groups use legal form to naturalize and perpetuate their domination. The ostensible neutrality of law conceals its political character. This analysis rings devastatingly true in India, where laws like the Unlawful Activities Prevention Act (UAPA), the sedition provisions of what was formerly the Indian Penal Code (IPC), and the Foreign Contribution Regulation Act (FCRA) are systematically used against critics of the government while the violent activities of Hindu nationalist organizations operate with virtual impunity.

1.4 Rawlsian Justice and the Indian Social Contract

John Rawls's theory of justice, developed primarily in "A Theory of Justice" published in 1971 and refined in "Political Liberalism" published in 1993, provides another powerful framework for evaluating India's rights situation. Rawls proposed the "veil of ignorance" thought experiment: a just social arrangement is one that rational persons would choose if they did not

know their own position in society, their class, their ethnicity, their sex, their natural talents. Behind the veil of ignorance, no one would choose a society organized around caste, because you might turn out to be born a Dalit. No one would choose a society in which your religion determined your access to citizenship rights, because you might turn out to be a Muslim. No one would choose a society in which soldiers could kill with complete impunity in your region, because you might turn out to be a Kashmiri.

Rawls's "difference principle" holds that social and economic inequalities are justified only if they benefit the least advantaged members of society. By this standard, virtually the entire institutional structure of Indian society is unjust. India is home to some of the largest concentrations of private wealth in the world. It is also home to some of the most severe and persistent poverty. The Oxfam India Wealth Report of 2024 noted that India's top one percent held over forty percent of the national wealth. At the same time, according to the Global Hunger Index, India ranked 111th out of 125 countries in 2023, with levels of child malnutrition that the Global Hunger Index classified as serious. The least advantaged members of Indian society, who are overwhelmingly Dalit, Adivasi, Muslim, and female, have not benefited from the enormous economic growth India has experienced since liberalization in 1991.

Rawls's theory is not without its critics. From the perspective of communitarians like Michael Sandel and Alasdair MacIntyre, the Rawlsian individual who deliberates behind the veil of ignorance is a fiction, an "unencumbered self" stripped of the social ties, cultural commitments, and community identities that actually make people who they are. This critique has some relevance to India: any political philosophy that ignores the actual social and cultural fabric of Indian society, with its extraordinary diversity and complexity, risks proposing solutions that are impractical or inappropriate.

However, the communitarian critique has been weaponized in India in a particularly dangerous way. Hindu nationalist ideology invokes the language of community values and cultural tradition to justify precisely the forms of discrimination and violence that Rawls's theory would condemn. The argument that India's majority Hindu community has its own values and traditions that should be respected operates as a disguised argument for majoritarian domination: what it actually claims is that the religious and cultural preferences of the dominant group should override the rights of minorities. This is not communitarianism in any philosophically defensible sense. It is the use of community rhetoric to justify exclusion.

1.5 Postcolonial Jurisprudence and the Rights of the Formerly Colonized

The postcolonial tradition in jurisprudence, associated with scholars like Frantz Fanon, Edward Said, Homi Bhabha, Partha Chatterjee, Upendra Baxi, and many others, offers a different starting point for thinking about rights in India. This tradition begins not with European natural law theory or liberal political philosophy but with the experience of colonialism, the systematic domination and exploitation of non-European peoples by European powers, and asks what that experience tells us about law, power, and rights.

Fanon's analysis in "The Wretched of the Earth" published in 1961 is foundational. Fanon observed that colonial law operated through what he called a "zone of nonbeing" in which the

colonized were rendered sub-human, objects of control and extraction rather than subjects of rights. The decolonization of legal systems, Fanon argued, is not merely a matter of changing the texts of laws or the faces of those who administer them. It requires a fundamental transformation of the colonial logic through which law operates.

Upendra Baxi, India's most distinguished legal philosopher and one of the most important human rights scholars in the world, has argued throughout his career that what he calls "the politics of human rights" in India has largely failed this test. In works like "The Future of Human Rights" published in 2002 and 2006, and in numerous subsequent essays and lectures, Baxi has argued that the dominant human rights discourse, what he calls "trade-related market-friendly human rights" produced by international financial institutions and dominant states, has increasingly displaced what he calls "modern human rights" grounded in the actual suffering and struggles of the world's most vulnerable people.

In the Indian context, Baxi's analysis translates into a powerful critique. The Indian state presents itself internationally as a rights-respecting democracy, uses the language of rights and development to justify its regional posture, and invokes the complexity of its governance challenges as an explanation for persistent failures. But the people who actually bear the costs of those failures, the Dalit woman whose rape complaint is dismissed by a police officer from a higher caste, the Kashmiri journalist imprisoned without trial under the Public Safety Act, the Adivasi family whose ancestral forest land is seized for a mining project despite the protections of the Forest Rights Act, experience not complexity but very simple and direct violence.

Baxi's work also draws attention to what he calls "suffering," which he argues must be the starting point of any serious human rights analysis. Abstract philosophical frameworks, however sophisticated, risk losing sight of the concrete experiences of real people. This textbook attempts to honor both levels: the philosophical and theoretical frameworks that allow us to analyze and critique systemic violations, and the specific, concrete, documented experiences of the people who bear those violations in their bodies and their lives.

1.6 The Theory of Structural Violence

Johan Galtung's concept of structural violence, introduced in his 1969 article "Violence, Peace, and Peace Research," is indispensable for understanding human rights violations in India. Galtung distinguished between direct violence, which involves a visible actor causing harm to a visible victim, and structural violence, which is built into the social and political structure and shows up as unequal power and consequently unequal life chances.

Structural violence does not require a specific actor making a specific decision to harm a specific person. It operates through systems, institutions, norms, and practices that systematically disadvantage certain groups relative to others. In India, the caste system is perhaps the most comprehensive form of structural violence ever institutionalized in human society. It is structural because it operates through the deep organization of society, assigning life chances, occupational roles, residential space, educational access, marriage possibilities, and social dignity on the basis of birth. It is violent because it imposes severe deprivations on those at the bottom of the

hierarchy: deprivations of physical safety, of nutritional adequacy, of educational opportunity, of economic autonomy, and of psychological freedom.

The concept of structural violence helps explain why formal legal guarantees of equality are insufficient. The Indian Constitution prohibits caste discrimination in Article 15 and mandates affirmative action for Scheduled Castes and Scheduled Tribes. But these formal provisions operate within a society in which the structural arrangements that produce caste inequality remain substantially intact. Upper-caste families control a vastly disproportionate share of India's economic assets, its cultural capital, its institutional authority, and its political power. The formal right of a Dalit child to attend the same school as an upper-caste child does not address the structural forces that ensure the Dalit child arrives at school having eaten less, having been subjected to more domestic stress, living in a settlement with less infrastructure, and inhabiting a family with less access to educational resources.

The work of Iris Marion Young, particularly in "Justice and the Politics of Difference" published in 1990, extends this analysis by identifying five "faces of oppression": exploitation, marginalization, powerlessness, cultural imperialism, and violence. Young argues that a theory of justice adequate to address the actual situation of subordinated groups must address all five faces, not merely the formally prohibited forms of discrimination. When applied to India's Dalit population, or to its Muslim minority, or to the people of Kashmir, all five faces of oppression are abundantly present.

1.7 Rights as Relationships: Feminist and Relational Theory

Feminist jurisprudence, and particularly relational theories of rights, offers another important corrective to mainstream rights theory. Carol Gilligan's work on the "ethics of care" and Martha Fineman's theory of "vulnerability" argue that mainstream rights theory, with its focus on the autonomous individual, obscures the relational and embodied character of human existence. People are not isolated atoms who encounter the social world from outside; they are always already embedded in webs of relationship and dependency that shape their needs, their capacities, and their vulnerabilities.

Martha Fineman's vulnerability theory is particularly useful for analyzing India's human rights situation. Fineman argues that vulnerability, the capacity to be harmed, is a universal and inescapable feature of human existence. What distinguishes individuals is not whether they are vulnerable but how well-resourced they are to respond to and recover from harm. The role of the just state, in Fineman's account, is to build and distribute resilience, the capacity to respond effectively to vulnerability. A state that systematically fails to build resilience for its most vulnerable populations, and that in fact uses the legal system to increase the vulnerability of those groups, is a state that has fundamentally failed its obligations.

By this standard, the Indian state has failed catastrophically for its most vulnerable populations. The combination of caste-based exclusion, religious discrimination, gender inequality, economic exploitation, and geographic marginalization means that Dalit women in rural areas, Muslim families in minority-dominated neighborhoods under threat of demolition, Adivasi communities in regions subjected to military operations, and Kashmiri civilians caught between militant

groups and security forces are not merely vulnerable: they are systematically deprived of the resilience resources that would allow them to respond to and recover from the harms to which they are continuously exposed.

1.8 Human Rights in International Law: Theoretical Foundations

The international law of human rights has its own theoretical foundations, which are important to understand before examining India's compliance and non-compliance with international human rights obligations.

The UN Charter of 1945 established the protection of human rights as one of the fundamental purposes of the international order, but it did not define those rights or create enforcement mechanisms. That was the task of the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly on December 10, 1948. The UDHR is a remarkable document. Written in the shadow of the Holocaust, it represents an attempt to articulate, in terms that could command cross-cultural agreement, the minimum conditions of a life worthy of human dignity. Eleanor Roosevelt, who chaired the drafting committee, described it as a common standard of achievement for all peoples.

The UDHR was initially not a binding legal instrument; it was a declaration of principles. But its provisions have been progressively incorporated into binding treaty law through the two International Covenants of 1966: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). India is a party to both Covenants, which means it has undertaken legally binding obligations to respect, protect, and fulfill the rights they contain.

The tripartite typology of state obligations, namely to respect, protect, and fulfill rights, was developed by Henry Shue in his 1980 work "Basic Rights" and has become foundational in international human rights law. The obligation to respect requires the state itself not to violate rights. The obligation to protect requires the state to prevent third parties from violating rights. The obligation to fulfill requires the state to take positive steps to ensure that rights can actually be exercised. India violates all three levels of obligation in multiple contexts, as this textbook will demonstrate across its fifteen parts.

The theoretical framework of peremptory norms, or jus cogens, is particularly important for evaluating the most severe violations. Jus cogens norms are norms of customary international law from which no derogation is permitted, even by treaty. The prohibition of torture, the prohibition of genocide, the prohibition of slavery, and the prohibition of crimes against humanity are established jus cogens norms. Scholarly debate continues about whether other norms, including the right to self-determination and the prohibition of racial discrimination, have attained jus cogens status. India's conduct in Kashmir, its treatment of Dalits, and its religious discrimination against Muslims and Christians raise questions about potential jus cogens violations that demand careful examination.

The jurisprudence of the UN Human Rights Committee, which monitors compliance with the ICCPR, is an essential resource for understanding India's international obligations and how it is

or is not meeting them. In July 2024, following its review of India's fifth periodic report, the Committee raised concerns about discrimination and violence against minority communities, about the use of broad and ill-defined laws to restrict civil liberties, about impunity for security forces, and about conditions in places of detention. The Committee's concerns track the analysis developed throughout this textbook with striking precision.

CHAPTER TWO: HISTORICAL ROOTS OF THE CRISIS

2.1 The Colonial Legal Inheritance and Its Consequences

To understand human rights violations in India today, one must begin with colonialism. British colonial rule in India was not, at its foundation, a system designed to respect rights. It was a system designed to extract wealth, maintain order, and perpetuate the subordination of hundreds of millions of people to the interests of a metropolitan power located thousands of miles away. The legal architecture through which this was accomplished has profoundly shaped the Indian state's subsequent relationship with its own citizens.

The colonial legal system in India operated on multiple levels. At the formal level, it introduced codified law, professional courts, and the notion of legal rights. The Indian Penal Code of 1860, drafted by Thomas Macaulay, is still substantially operative in India today, though renamed as the Bharatiya Nyaya Sanhita since 2023. The Code of Criminal Procedure, introduced in 1882, is another colonial instrument that remained operative until its replacement in 2023 by the Bharatiya Nagarik Suraksha Sanhita. These codes imported the formal apparatus of rule of law into India.

But alongside this formal apparatus, colonial law maintained a parallel system of exceptional, administrative, and emergency powers that operated without the normal safeguards of the rule of law. The Rowlatt Act of 1919, which allowed detention without trial and was the immediate trigger for the Amritsar massacre in which General Dyer's troops killed several hundred unarmed civilians in a public garden, was a colonial emergency power. The Criminal Law Amendment Act of 1908, used to suppress nationalist movements, was a colonial emergency power. The Bengal Regulation of 1818, which allowed preventive detention without judicial oversight, was a colonial emergency power.

What happened after independence is a story of systematic retention. The newly independent Indian state inherited these colonial emergency powers and, in many cases, extended and institutionalized them rather than dismantling them. The Preventive Detention Act of 1950 was among the first legislation enacted by the new parliament. The National Security Act of 1980 continued the tradition. The Public Safety Act in Jammu and Kashmir, the Armed Forces Special Powers Act, and ultimately the Unlawful Activities Prevention Act represent the progressive accumulation of colonial emergency logic within the framework of a formally democratic constitutional republic.

Ranabir Samaddar, one of the most important scholars of law and governance in South Asia, has described this as the "colonial continuity in the governance of exception." The logic is consistent: there are populations and territories that are deemed too dangerous, too insurgent, or too politically inconvenient to be governed through the normal apparatus of law, and for those populations special legal regimes apply that suspend the protections of ordinary law. In colonial India, those populations were the freedom fighters, the dissidents, and the nationalists who challenged British authority. In independent India, they have been, in different periods and to different degrees, Kashmiris, Nagas, Manipuris, Assamese, Adivasis in the Maoist-affected regions, Muslims, and, most recently, journalists, academics, and human rights defenders who have challenged the Hindu nationalist project.

The continuity runs deeper than specific legislation. It runs through the institutional culture of the police, which in India is a deeply colonial institution. The Indian Police Service, the elite cadre that commands police forces across the country, is organized along the lines established by the Indian Police Act of 1861, enacted immediately following the brutal suppression of the 1857 uprising. This act created a militarized, centralized police force oriented toward the maintenance of order rather than the service of citizens. The culture of impunity, the use of torture in custody, the arbitrary detention, the extrajudicial violence, the treatment of social marginalization as a criminal matter, these are colonial inheritances that persist in the DNA of Indian policing.

The famous Supreme Court decision in D.K. Basu v. State of West Bengal, decided in 1996, acknowledged the endemic reality of police torture and custodial violence and laid down guidelines designed to prevent them. But as subsequent reports, including those of the National Human Rights Commission and international human rights organizations, have consistently documented, those guidelines are systematically ignored. Custodial torture remains routine. Custodial deaths, while systematically underreported, number in the hundreds annually. The colonial police culture has proved more durable than the post-colonial legal reforms designed to modify it.

2.2 Ambedkar and the Making of the Constitution: Promises and Contradictions

Bhimrao Ramji Ambedkar is the towering figure of the Indian Constitution. As the chairman of the drafting committee, he was the principal architect of the document that established independent India's legal order. Ambedkar was also a Dalit, a member of the Mahar community, who had experienced the violence of caste discrimination in the most intimate and personal ways throughout his life. His constitutional project was, therefore, deeply informed by an understanding of what it means to be a person denied the most basic recognition of one's humanity by the social order into which one is born.

Ambedkar's speeches in the Constituent Assembly debates of 1946 to 1949 are remarkable documents of political philosophy. In his address presenting the draft constitution on November 4, 1948, he outlined his understanding of the relationship between formal constitutional rights and social transformation. He was deeply pessimistic about the gap between the two. He argued that the Constitution had provided India with a political democracy, meaning formal legal equality and democratic institutions, but that this political democracy existed atop a deeply undemocratic social and economic foundation. He explicitly warned that this gap, if not

addressed, would be exploited by those who had been excluded from social and economic equality to destroy the political democracy that they rightly regarded as insufficient.

His closing address to the Constituent Assembly on November 25, 1949 is perhaps the most famous and the most prescient document in the history of Indian constitutional thought. He outlined three warnings. First, that constitutional morality must be preserved against majoritarian democracy: the rule of law must be a genuine constraint on power, not merely a formal facade. Second, that political heroes must not be elevated above constitutional institutions, a remarkable warning about the dangers of what he called "Bhakti" or hero-worship in politics. Third, that political democracy must be supplemented by social democracy, genuine equality of conditions, not merely formal equality of rights.

All three of Ambedkar's warnings have been violated comprehensively in contemporary India. The Supreme Court has been systematically weakened, at least in relation to political challenges to the government, by executive pressure, by the appointment process for judges, and by the emergence of what critics have called a "committed judiciary" unwilling to challenge executive overreach. Political hero-worship, of Narendra Modi specifically, has reached levels that Ambedkar would have found deeply alarming, with the Prime Minister's image deployed across state resources and institutional spaces in ways that blur the line between the person and the constitutional office. And the social democracy that Ambedkar regarded as indispensable remains as remote as it was in 1949.

What Ambedkar did not fully anticipate, or perhaps preferred not to state explicitly in the charged political atmosphere of constitutional framing, was the degree to which the Constitution itself contained seeds of its own subversion. The Directive Principles of State Policy in Part IV of the Constitution established a set of social and economic goals, including for the elimination of poverty, the guarantee of work, the protection of workers, and the organization of village panchayats. But these principles were explicitly made non-justiciable: they could not be enforced in courts. This created a two-tier constitutional structure in which the enforceable rights were largely formal and civil-political, while the social and economic rights that would have required substantial redistribution were relegated to aspirational status.

The jurisprudence of the Supreme Court has partially bridged this divide by reading social rights into the fundamental rights, particularly through the expansive interpretation of Article 21's right to life. But this judicial creativity, while real and important, cannot substitute for comprehensive social legislation, and it has not done so. The result is a constitutional system in which the most vulnerable can, in theory, approach courts for vindication of their rights, but in practice, the barriers of cost, distance, complexity, and unfamiliarity with legal process make access to constitutional remedies largely illusory for the poorest and most marginalized.

2.3 Partition Violence, Its Aftermath, and the Formation of a Security State

The partition of the Indian subcontinent in August 1947, which accompanied independence, was among the largest and most violent forced migrations in human history. An estimated one to two million people were killed and twelve to fifteen million displaced in the communal violence that accompanied partition. The trauma of partition, and the subsequent wars with Pakistan over

Kashmir, shaped the formation of the Indian state in ways that are still visible in its security doctrine, its treatment of minorities, and its relationship with its neighbors.

The immediate context of the partition made the Indian state, understandably, highly security-conscious. But the security logic of the early post-independence period has been institutionalized and extended in ways that have served to undermine, rather than protect, human rights. The conflation of national security with state security, and of state security with the security of the ruling political formation, is a pattern visible across much of the Indian state's subsequent history.

The relationship between the partition trauma and the contemporary treatment of Indian Muslims is one of the most sensitive and important themes in any analysis of human rights in India. The Hindu nationalist project, which has been the dominant political force in India since 2014 and has achieved a more ideologically coherent expression under the Modi government, draws on a reading of Indian history that treats the partition as evidence of the fundamental incompatibility of Islam and Indian nationhood. On this reading, Indian Muslims are permanent suspects, their loyalty to the Indian nation potentially divided, their religious identity inherently separatist. This logic underpins the Citizenship Amendment Act, which for the first time in Indian history made religion a formal criterion of eligibility for citizenship rights. It underpins the treatment of the Muslim community as, in the words of various Hindu nationalist leaders, "infiltrators" and "jihadis." And it provides the ideological context for the explosion of communal violence, mob lynchings, and official harassment that has characterized the Modi years.

The security state logic also underlies India's approach to Kashmir. India's incorporation of the former princely state of Jammu and Kashmir is contested at both the legal and political levels, as will be examined in detail later in this textbook. But whatever one's view of the underlying sovereignty questions, the human rights situation in Kashmir, characterized by decades of emergency law, systematic torture, enforced disappearances, extrajudicial killings, mass detentions, internet shutdowns, and the suppression of all political dissent, is a documented catastrophe.

2.4 The Nehruvian State and Structural Inequality

The thirty-year dominance of the Indian National Congress under Jawaharlal Nehru and his successors created the framework of what is often called the "Nehruvian state": a mixed economy with heavy state involvement, a nonaligned foreign policy, a commitment to secularism and scientific rationalism, and a moderately progressive approach to social policy. This framework had genuine achievements. India avoided the worst forms of authoritarianism in the immediate post-independence period. Elections were held regularly. The press was relatively free. The courts maintained a degree of independence.

But the Nehruvian state also had deep structural failures from a human rights perspective. Its economic model, despite rhetoric about socialism and equality, largely preserved the existing social and economic order. Land reform, which was the fundamental economic measure necessary to address the power of the landed upper castes over the landless Dalit and Adivasi poor, was implemented so inadequately that land continues to be distributed with profound

inequality. The green revolution of the 1960s and 1970s, which succeeded in eliminating famine but dramatically increased inequality within the agricultural sector, benefited large landholders disproportionately and deepened the dependence of marginal and landless laborers.

The Nehruvian approach to Kashmir was also, in retrospect, catastrophic. The integration of Kashmir through the Instrument of Accession in 1947 was accompanied by a promise of a plebiscite to determine the future of the territory, a promise India has consistently refused to honor. The subsequent political history of Kashmir, characterized by the rigging of elections, the imprisonment of political leaders, the dismissal of elected governments, and finally the transformation of a political problem into a military one through the decision to meet the insurgency of 1989 with overwhelming security force, has produced the human rights crisis that exists today.

2.5 The Emergency and the Constitution Under Siege

The period from June 1975 to March 1977, when Prime Minister Indira Gandhi declared a national emergency under Article 352 of the Constitution, suspending fundamental rights and civil liberties, is the most dramatic and explicitly acknowledged episode of constitutional breakdown in India's history. But it is also, in some respects, the most misleading one, because the Emergency was eventually lifted, the perpetrators were voted out of office, and the Supreme Court's shameful capitulation during the Emergency, illustrated most vividly in the ADM Jabalpur case in which a majority of the Court held that individuals had no right to approach courts to challenge their detention even if they were being arbitrarily imprisoned, was subsequently recognized as one of the low points of Indian judicial history.

The Emergency is misleading as a framework because it treats authoritarian governance as an exception to India's democratic norm, when in fact the practices associated with the Emergency, arbitrary detention, press censorship, suppression of political opposition, use of state resources for partisan purposes, have been features of Indian governance in various forms throughout the post-independence period, not merely during the explicit emergency period. The specific constitutional mechanism of the Emergency was invoked only once at the national level and twice through President's Rule in states, but the underlying dynamic of executive power claiming emergency justifications to circumvent legal constraints is a permanent feature of the Indian political landscape.

The Supreme Court's judgment in Kesavananda Bharati v. State of Kerala, decided in 1973, which established the "basic structure" doctrine limiting parliamentary power to amend the Constitution, is often cited as the high point of Indian constitutional jurisprudence. The doctrine holds that while Parliament can amend any provision of the Constitution, it cannot alter its "basic structure," which includes democracy, the rule of law, judicial review, fundamental rights, federalism, and secularism. The doctrine was upheld and applied by the Court during and after the Emergency period, and has served as a constitutional backstop against the most egregious forms of constitutional amendment.

But the basic structure doctrine's protective function has been increasingly tested under the Modi government. The amendments to the Constitution that introduced the National Register of

Citizens in Assam, the effective abrogation of Article 370 through executive action without the constitutionally required consultation with the state legislature of Jammu and Kashmir, and the passage of the Citizenship Amendment Act have all been challenged as violations of the basic structure. The Supreme Court's handling of these challenges has been, to put it charitably, cautious. The Article 370 case was decided against the challengers. The CAA challenge remains pending after years. The basic structure doctrine protects the Constitution's form more effectively than its substance.

CHAPTER THREE: THE ARCHITECTURE OF VIOLATIONS IN THE INDIAN CONSTITUTION

3.1 The Constitutional Promises: A Reading of Part III

Part III of the Indian Constitution, titled "Fundamental Rights," is a remarkable document of rights commitment. Articles 12 through 35 establish a comprehensive framework of rights that includes rights to equality, freedom, protection against exploitation, freedom of religion, cultural and educational rights, and the right to constitutional remedies. The breadth of these rights, combined with the creative judicial expansion of their scope through interpretive jurisprudence, makes India's formal rights framework comparable to, and in some respects more extensive than, that of many established liberal democracies.

Article 14 establishes the right to equality before the law and the equal protection of the laws. Article 15 prohibits discrimination by the state on grounds of religion, race, caste, sex, or place of birth. Article 16 guarantees equality of opportunity in matters of public employment. Article 17 abolishes untouchability and makes its practice an offense punishable by law. Article 19 guarantees six freedoms, including freedom of speech and expression, freedom to assemble peacefully, freedom of association, freedom of movement, freedom of residence, and freedom of profession. Article 20 protects against retrospective criminal laws and double jeopardy. Article 21 guarantees the right to life and personal liberty. Articles 22 through 35 add further protections against arbitrary detention, exploitation, forced labor, religious discrimination, and cultural assimilation.

The rights framework is subject to significant limitations. Under Articles 19(2) through 19(6), the freedoms guaranteed in Article 19 can be restricted by the state on grounds including the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, and contempt of court. The breadth of these permitted restrictions is extensive, and the history of their invocation by successive governments reveals a consistent tendency to prioritize state interests over individual rights.

Under Article 21, which is the most expansively interpreted of all fundamental rights, the Supreme Court has through a series of landmark decisions constructed an extraordinarily comprehensive right to life that encompasses the right to livelihood (Olga Tellis v. Bombay Municipal Corporation, 1985), the right to education (Unni Krishnan v. State of Andhra Pradesh, 1993), the right to health (Paschim Banga Khet Mazdoor Samity v. State of West Bengal, 1996),

the right to a clean environment (M.C. Mehta v. Union of India, various decisions), the right to food (People's Union for Civil Liberties v. Union of India, 2001-onwards), the right to shelter, and the right to human dignity. This jurisprudential expansion of Article 21 represents the Supreme Court's most creative contribution to Indian constitutional thought and its most ambitious attempt to address the gap between formal rights and material deprivation.

But the expansion of rights on paper has not been matched by expansion of enforcement. The compliance with Supreme Court directions in public interest litigation has been chronically inconsistent. The implementation of the right to food, which the Court has monitored through the PUCL case for over two decades, remains deeply inadequate. Millions of people continue to go hungry in a country with massive food grain stocks, because the public distribution system, despite court mandates, continues to be riddled with corruption, exclusion errors, and administrative failure. The right to education, guaranteed by Article 21A, inserted in 2002, and implemented by the Right to Education Act of 2009, has improved enrollment but not the quality of learning outcomes, which remain catastrophically poor across most government schools.

3.2 The Problematic Architecture: Articles That Enable Oppression

Beyond the rights framework, the Constitution contains a series of provisions that have enabled or facilitated human rights violations. Some of these are explicit power-conferring provisions that have been systematically abused. Others are structural provisions that have created imbalances of power that enable violations. Still others are conceptual gaps or ambiguities that have been exploited by successive governments to legitimize violation.

Article 352, which authorizes the declaration of national emergency on grounds of war, external aggression, or "armed rebellion" (the original text said "internal disturbance"), creates a mechanism that can suspend fundamental rights on a national scale. The Forty-Fourth Amendment, enacted in 1978 after the Emergency period, introduced some safeguards but did not eliminate the fundamental risk of executive abuse of emergency power. More importantly, the experience of the Emergency revealed that even without formal declaration of national emergency, successive governments have maintained quasi-emergency conditions in specific regions through the use of special purpose legislation.

Article 355, which places on the Union government a duty to protect every state against external aggression and internal disturbance, and Article 356, which authorizes the President to assume the functions of a state government when it cannot be carried on in accordance with the provisions of the Constitution, have been extensively abused. Article 356 was invoked over one hundred times between independence and the Supreme Court's decision in S.R. Bommai v. Union of India in 1994, which introduced judicial review of President's Rule proclamations. A significant proportion of these invocations were motivated by partisan considerations rather than genuine constitutional breakdown, effectively allowing the central government to dismiss state governments of opposition parties.

Article 370, which granted special autonomous status to Jammu and Kashmir, was the constitutional expression of the promise made at the time of accession. Its effective abrogation through a presidential order in August 2019, which the Supreme Court unanimously upheld in

December 2023, represents a fundamental violation of the constitutional compact. The abrogation was accomplished through a legal maneuver widely criticized by constitutional scholars as dishonest: the Presidential order was issued citing the concurrence of the "Governor" of Jammu and Kashmir rather than the elected state legislature as required by the provision, at a time when the state was under President's Rule and therefore had no elected government. The effect was to use a temporary constitutional provision intended for emergency situations to permanently modify the constitutional relationship between the Union and Jammu and Kashmir, eliminating the very mechanism that was supposed to have required democratic consent.

Article 31A, 31B, and the Ninth Schedule, inserted by the First Constitutional Amendment of 1951, created a mechanism for protecting land reform laws from judicial review under the fundamental rights. The justification was that land reform was a social necessity that the courts, dominated by upper-caste lawyers and judges, might strike down on property rights grounds. The First Amendment was itself a response to judicial decisions that had struck down land reform legislation. But the Ninth Schedule, which was designed to protect progressive social legislation, was subsequently extended to protect hundreds of laws of very doubtful social merit, including laws that violated principles of equality, and was eventually used to exclude legislation from judicial review that had nothing to do with land reform. The Supreme Court partially corrected this in I.R. Coelho v. State of Tamil Nadu in 2007, holding that laws inserted in the Ninth Schedule after April 24, 1973 could be reviewed for violation of the basic structure, but the fundamental problem of constitutional provisions designed for progressive purposes being captured for conservative or even repressive ones remains.

3.3 The UAPA and the Criminalization of Dissent

The Unlawful Activities Prevention Act, originally enacted in 1967 and amended significantly in 2004, 2008, 2012, and 2019, is the central instrument through which the Indian state criminalizes political dissent, human rights activism, and journalistic investigation. The UAPA allows the government to designate organizations as "unlawful associations" or "terrorist organizations" and to prosecute individuals on terrorism charges with minimal procedural safeguards.

The 2019 amendments, pushed through Parliament under the Modi government, introduced the most significant change: the power to designate individuals, rather than merely organizations, as "terrorists." This means that a person can be officially labeled a terrorist by executive action, without any judicial determination, and can face the full panoply of UAPA's severe consequences, including extended pre-trial detention of up to 180 days without bail, and a near-impossible bail standard in which the court must be satisfied that there are reasonable grounds to believe the accusation is prima facie true before granting bail.

The pattern of UAPA use under the Modi government is unmistakable. The law has been used against academics who have written about caste discrimination (the Bhima Koregaon case, in which sixteen prominent activists, journalists, academics, and lawyers were arrested in 2018 and 2020 and subjected to years of pre-trial imprisonment), against journalists who have reported on Kashmir (the arrest of Fahad Shah, editor of The Kashmir Walla, under UAPA in 2022 and his imprisonment for two years), against students who protested the Citizenship Amendment Act

(the arrests of multiple students from Jawaharlal Nehru University and Jamia Millia Islamia), and against human rights defenders who have documented violence against minorities and Adivasis.

In January 2026, the Human Rights Watch documented the continuing misuse of counterterrorism law to crack down on peaceful protests and free speech in India, noting that several activists including students remained in jail without charge under the abusive law. This contemporaneous documentation confirms a pattern that has been consistent for over a decade: the UAPA functions not as a counterterrorism measure but as a silencing mechanism, a tool for keeping critical voices out of circulation for extended periods without the need to prove any criminal charge in open court.

The jurisprudence on the UAPA bail provisions is deeply troubling. The Supreme Court, in cases like National Investigation Agency v. Zahoor Ahmad Shah Watali in 2019, upheld an interpretation of the bail standard that made it virtually impossible for accused persons to secure bail, requiring them to establish a prima facie case against the prosecution's case while the prosecution need only show that the accusation is "prima facie true" on a superficial reading of the charge sheet. This sets an absurdly low bar for continued imprisonment and a virtually impossibly high bar for release.

The European Court of Human Rights, dealing with comparable provisions in European counter-terrorism contexts, has consistently held that prolonged pre-trial detention without adequate judicial oversight violates Article 5 of the European Convention on Human Rights. The ICCPR, to which India is a party, contains similar protections under Article 9. The systematic denial of bail in UAPA cases, combined with the length of pre-trial detention and the conditions in which accused persons are held, amounts to a form of punishment imposed before conviction, in violation of both the presumption of innocence and the right to liberty.

3.4 The FCRA and the Strangling of Civil Society

The Foreign Contribution Regulation Act, which regulates the receipt of foreign funds by Indian non-governmental organizations and civil society groups, has become one of the most effective instruments of civil society suppression under the Modi government. The FCRA is not inherently repressive: there are legitimate concerns about foreign interference in domestic political processes through the funding of civil society organizations. But its application under the current government has been discriminatory and politically motivated, targeting organizations that document violations or advocate for the rights of minorities, Dalits, and Adivasis, while leaving organizations aligned with the ruling party's agenda largely untouched.

The numbers are stark. According to Amnesty International, the government revoked the FCRA licenses of over 20,000 NGOs between 2015 and 2023, including some of India's most respected and long-standing civil society organizations. Amnesty International India itself was forced to halt all operations in India in September 2020 after its bank accounts were frozen by the government and its staff were subjected to investigation by the Enforcement Directorate. The Ford Foundation was put on a watch list. Greenpeace India had its accounts frozen and its FCRA license cancelled. Greenpeace's case was particularly significant because the organization had been documenting the environmental and social impact of large industrial projects on Adivasi

communities, work that directly conflicted with the government's pro-corporate development agenda.

Human Rights Watch, in its 2025 and 2026 World Reports, specifically documented India's use of the FCRA and counterterrorism laws to harass civil society organizations. The 2026 report noted that Indian authorities had used abusive foreign funding laws, counterterrorism laws, trumped-up financial investigations, and other means to attack civil society organizations and silence their work.

The jurisprudential basis for challenging FCRA restrictions is complex. The Supreme Court, in Noel Harper v. Union of India in 2022, upheld the constitutionality of the 2020 FCRA amendments, which had introduced additional restrictions on the receipt and use of foreign funding. The Court's decision has been widely criticized by civil society organizations and legal scholars as excessively deferential to the executive's claimed national security rationale, failing to adequately consider the chilling effect of the law on civil society and the freedom of association guaranteed by Article 19(1)(c).

The international legal framework is clearer. The UN Declaration on Human Rights Defenders, adopted by the General Assembly in 1998, specifically protects the right of human rights defenders to seek and receive funding from abroad for their work. This declaration, while not a binding treaty, represents a consensus interpretation of existing treaty obligations and has been affirmed repeatedly by UN treaty monitoring bodies. India's use of the FCRA to effectively defund and destroy civil society organizations that engage in human rights documentation is incompatible with this framework.

3.5 Sedition, Anti-Terror Laws, and the Bhima Koregaon Case

The former Section 124A of the Indian Penal Code, now transformed into Section 152 of the Bharatiya Nyaya Sanhita, which addresses acts endangering sovereignty, integrity, and unity of India, illustrates the complex relationship between colonial law and contemporary repression. The original sedition provision was drafted by Thomas Macaulay and inserted into the IPC specifically to provide British colonial authorities with a mechanism to suppress Indian nationalist activity. Mahatma Gandhi famously described his prosecution under Section 124A in 1922 as the "affection of the proudest privilege of a British subject," turning the colonial law into a badge of honor.

After independence, Section 124A was retained, challenged before the Supreme Court, and upheld in Kedar Nath Singh v. State of Bihar in 1962, on the condition that it be applied only to speech that incites imminent violence or is likely to disturb public order. But this limiting interpretation was consistently ignored by prosecuting authorities, who used the provision freely against journalists, academics, activists, and politicians who had criticized the government without any incitement to violence. The Supreme Court in May 2022 stayed the operation of Section 124A pending a review, but the government's subsequent response was to effectively replace it with a similar provision in the new criminal legislation that does not carry the "sedition" label but creates comparable restrictions.

The Bhima Koregaon case, named after the location of a commemoration event in Maharashtra on January 1, 2018 that was followed by violence against Dalit communities, is the most significant contemporary instance of the use of anti-terror law against human rights defenders and intellectuals. In the aftermath of the Bhima Koregaon events, Pune police arrested sixteen prominent individuals, including the poet and folk singer Varavara Rao, the academic and activist Anand Teltumbde (a son-in-law of Ambedkar), the human rights lawyer Sudha Bharadwaj, the academic Hany Babu, and others. All were charged under the UAPA on the basis of alleged links to the Communist Party of India (Maoist).

The evidence against the accused has been devastating not because of its strength but because of its apparent fabrication. Digital forensics conducted by international experts, including from Arsenal Consulting in the United States, demonstrated that key digital evidence, documents allegedly found on the computers of the accused that purported to show a "Maoist conspiracy" to assassinate Prime Minister Modi, had been planted by external hackers using the NetWire remote access trojan malware. The forensic reports were meticulous and their conclusions, that the documents were fabricated, were widely reported in international media. Despite this, the accused remained in prison for years. Father Stan Swamy, an eighty-three-year-old Jesuit priest who had spent decades advocating for the rights of Adivasi communities in Jharkhand, died in judicial custody in July 2021, eight months after his arrest, without trial.

The Bhima Koregaon case represents, in miniature, everything that is wrong with India's approach to human rights and the rule of law. It shows a state that uses the apparatus of criminal prosecution, including the most severe criminal provisions available, against people who have dedicated their lives to advocating for the most marginalized members of society. It shows a judiciary that, despite the constitutional guarantee of bail as the rule and jail as the exception, has allowed elderly, ill, and evidently innocent individuals to languish in prison for years without trial. And it shows a forensic and evidentiary process so corrupted by political considerations that fabricated evidence is maintained as the basis for prosecution despite expert debunking.

CHAPTER FOUR: KASHMIR - THE ENDLESS EMERGENCY

4.1 The Legal Status of Jammu and Kashmir: A Foundational Dispute

The legal status of Jammu and Kashmir is one of the most complex and contested issues in contemporary international law. Understanding it requires engaging with multiple overlapping legal frameworks: the law of succession to British colonial possessions, the principles of self-determination in international law, the law of treaties as applied to the Instrument of Accession, the UN Security Council resolutions, and the constitutional provisions of the Indian Constitution.

The historical background is as follows. Prior to 1947, the Indian subcontinent was divided between British India, consisting of provinces directly administered by the Crown, and the Princely States, nominally sovereign entities governed by hereditary rulers under paramountcy agreements with the British Crown. Jammu and Kashmir was one of the largest Princely States, ruled by the Dogra dynasty under Maharaja Hari Singh. The population of the state was

approximately seventy-seven percent Muslim, with the majority concentrated in the Kashmir Valley, while the Dogra ruling dynasty and a significant portion of the Jammu region were Hindu.

Under the Indian Independence Act of 1947, the Princely States were given the option of acceding to either India or Pakistan, or in theory remaining independent. The lapse of British paramountcy meant that each Princely State became technically sovereign and had to make a decision. Hari Singh initially attempted to remain independent but was forced to act when Pakistani-backed tribal militias invaded the state in October 1947. He signed the Instrument of Accession with India on October 26, 1947, acceding on the three subjects of defense, foreign affairs, and communications.

The Instrument of Accession was accepted by the Governor-General of India, Lord Mountbatten, with the specific note that "it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people." This note, and the corresponding promise made by Nehru to the UN Security Council that a plebiscite would be held to determine the wishes of the Kashmiri people, form the basis of the international legal argument that India's accession is conditional and subject to democratic ratification.

The UN Security Council passed Resolution 47 in April 1948, which established a UN Commission for India and Pakistan and called for a plebiscite under UN auspices after the withdrawal of Pakistani forces and the reduction of Indian forces. The plebiscite was never held. India's position evolved from acknowledging the commitment in principle to denying its applicability on various grounds, including the argument that Pakistan's continuing support for militant groups in Kashmir has made a fair plebiscite impossible, and more recently the argument that subsequent elections in Kashmir have provided adequate democratic legitimacy.

The legal debate is genuinely complex. Philippe Sands, in his work on international law, and many other international law scholars have noted that the principle of self-determination in international law, which was established in the UN Charter and developed in subsequent instruments, does not translate straightforwardly into a legal right of secession in all circumstances. At the same time, the specific factual and legal context of Kashmir, including the explicit promise of a plebiscite, the continuing UN Security Council resolutions that have never been withdrawn, and the overwhelming evidence of popular sentiment in the Kashmir Valley, creates a stronger case for genuine self-determination than exists in most comparable situations.

The August 2019 decision to revoke Article 370, which stripped Jammu and Kashmir of its special status, divided it into two Union territories, and fundamentally altered the constitutional arrangements under which it had been governed, was made without any consultation with the people of Kashmir. It was implemented under a communications blackout, a massive security operation, mass detentions of political leaders including former Chief Ministers, and an indefinite curfew. The Supreme Court's December 2023 decision upholding the abrogation was met with deep skepticism by international legal scholars and human rights organizations.

The FIDH report of October 2024, titled "Your Land is Our Land," documented the consequences of the legal changes in Kashmir for land rights, finding widespread dispossession of Kashmiri families from lands they had occupied for generations, often without any legal basis or compensation. The report noted that since the revocation of Article 370, changes to land laws have allowed non-Kashmiris to purchase land in the former state for the first time, and that central government entities and military forces have expanded their land holdings at the expense of local communities.

4.2 AFSPA: The Anatomy of Immunity

The Armed Forces Special Powers Act is perhaps the most legally indefensible piece of legislation currently in force in any democratic state in the world. It gives members of the armed forces deployed in areas designated as "disturbed" the power to use lethal force against any person acting in contravention of any law or order. It authorizes the arrest of any person without a warrant on the basis of reasonable suspicion. It authorizes the entry and search of premises without a warrant. And, most devastatingly, it provides that no prosecution, suit, or other legal proceeding shall be instituted against any member of the armed forces in respect of anything done or purported to be done in the exercise of these powers, without the previous sanction of the Central Government.

That last provision, the requirement of prior sanction for prosecution, is the functional core of AFSPA's impunity mechanism. In over three decades of the law's operation in Jammu and Kashmir, not a single prosecution has been sanctioned by the Central Government. Not a single soldier has been brought before a civilian court to answer for extrajudicial killings, custodial torture, enforced disappearances, or rape in the course of security operations. The Pathribal encounter in 2000, in which Army personnel killed five civilians and presented them as militants killed in a "genuine encounter," was investigated by the CBI, which concluded that the killings were cold-blooded murders. The prosecution of the Army personnel was blocked by the Central Government's refusal to sanction it under AFSPA.

The legal challenge to AFSPA has been extensive. The Justice B.P. Jeevan Reddy Committee, appointed by the Government of India in 2004 to review the law, recommended in its 2005 report that AFSPA should be repealed entirely and replaced with a more humane law that would still provide necessary powers to security forces without absolute immunity. The recommendation was ignored. The Supreme Court, in Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India in 2016, held that every case of alleged extra-judicial killing must be independently investigated, even in disturbed areas, and that the protection of AFSPA does not apply to "fake encounters." The government largely ignored this judgment as well.

The UN Human Rights Committee, in its July 2024 review of India's compliance with the ICCPR, specifically called on India to repeal AFSPA. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has consistently called for AFSPA's repeal. The UN High Commissioner for Human Rights's 2018 report on Kashmir called for AFSPA's repeal. No action has been taken.

When the UN Special Rapporteurs expressed alarm in November 2025 following the Indian security forces' operations in the aftermath of the Pahalgam terrorist attack of April 2025, noting that Indian authorities had suspended mobile internet services and blocked around 8,000 social media accounts including those of journalists and independent media outlets, India's response was consistent with its longstanding pattern of dismissing international human rights criticism as interference in internal affairs.

The international legal analysis of AFSPA is clear. The law, as applied, violates Article 6 of the ICCPR (the right to life), Article 7 (the prohibition of torture and cruel, inhuman or degrading treatment), Article 9 (the right to liberty and security), Article 14 (the right to a fair trial), and Article 17 (the right to privacy, violated by warrantless searches). The effective denial of judicial remedy through the sanction requirement also violates Article 2(3) of the ICCPR, which requires states to ensure that any person whose rights are violated shall have an effective remedy.

The domestic Indian constitutional analysis is equally damning. AFSPA's effective immunity provision creates a class of persons, soldiers operating in disturbed areas, who are above the law in a way that directly contradicts the guarantee of equality before the law under Article 14. The power to use lethal force on the basis of mere suspicion, without any requirement of threat to life or necessity, directly contradicts the right to life under Article 21, which the Supreme Court has consistently held must not be taken away "except according to procedure established by law," a requirement that must be read to include substantive due process guarantees of reasonableness and proportionality.

4.3 The Public Safety Act and Preventive Detention

The Jammu and Kashmir Public Safety Act of 1978 is a preventive detention law that allows the detention of any person for up to two years, in the case of persons detained on grounds of security, or one year in the case of persons detained on grounds of disturbing public order, without charge or trial. The PSA requires no judicial determination before detention; it requires only an administrative order from the District Magistrate or Divisional Commissioner. Judicial review is available but is limited and largely ineffective.

The PSA has been used systematically to detain journalists, political activists, lawyers, traders, academics, and ordinary citizens who express any form of dissent from the Indian government's position in Kashmir. A pattern particularly offensive to the rule of law is "revolving door" detention: a person is detained under the PSA, successfully challenges the detention in court and secures release, and is immediately re-detained under a fresh PSA order before they can leave the detention facility. The courts have criticized this practice but have been unable to effectively prevent it.

The UN Human Rights Committee has recommended that the PSA be amended to bring it into conformity with international human rights law, specifically by eliminating the two-year administrative detention period and requiring judicial authorization for any detention beyond forty-eight hours. The recommendation tracks the requirements of Article 9 of the ICCPR, which guarantees the right to be brought promptly before a judicial officer to review the lawfulness of detention.

Post-August 2019, the use of the PSA dramatically intensified. In the weeks following the abrogation of Article 370, thousands of people were detained under the PSA, including political leaders from across the spectrum, from the National Conference and People's Democratic Party who had historically supported India's position in Kashmir. The former Chief Ministers Omar Abdullah and Mehbooba Mufti were detained under the PSA for months. The Amnesty International report noted that these detentions demonstrated that the PSA was being used as a tool of collective punishment and political suppression rather than as a genuine security measure.

4.4 Internet Shutdowns as Human Rights Violations

India has established a grim distinction as the world's leader in internet shutdowns. According to Access Now's Shutdown Tracker Optimization Project (STOP), India has imposed more government-ordered internet shutdowns than any other country in the world for multiple consecutive years. In 2022, India imposed 84 shutdowns. In 2023 and 2024, the pattern continued.

Jammu and Kashmir holds the dubious record of the world's longest internet shutdown: from August 4, 2019, the day before the revocation of Article 370, through January 14, 2020, high-speed internet was completely shut down, a shutdown of 164 days. The shutdown was the longest ever imposed in a democracy. Low-speed internet was partially restored after the Supreme Court's judgment in Anuradha Bhasin v. Union of India in January 2020, in which the Court held that freedom of speech on the internet is a fundamental right and that internet shutdowns must be proportionate, limited in duration, and subject to judicial review.

The Anuradha Bhasin judgment was an important step but its implementation has been inconsistent. Internet restrictions in Kashmir have continued in various forms since 2020, with high-speed 4G internet restored only in February 2021 and subsequently subject to further restrictions during periods of unrest. Following the Pahalgam attack in April 2025, mobile internet services were again suspended and thousands of social media accounts were blocked, drawing the criticism from UN Special Rapporteurs noted earlier.

The human rights consequences of internet shutdowns are extensive and under-analyzed. The right to seek and receive information, guaranteed by Article 19(1)(a) of the Indian Constitution and by Article 19 of the ICCPR, is directly violated. The ability of journalists to report, of lawyers to communicate with clients, of businesses to operate, of students to study, of families to communicate with relatives, of activists to document violations, all are severely impaired by internet shutdowns. In a society that has become substantially dependent on digital communications for commerce, education, and social life, an internet shutdown is not merely an inconvenience: it is a systematic assault on the economic and social life of the affected population.

The Delhi High Court's 2020 judgment in the Anuradha Bhasin case directed the government to review internet restrictions periodically and to make the relevant orders publicly available. But the government's compliance with these directions has been incomplete, and the pattern of disproportionate and politically motivated shutdowns has continued.

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4.5 Enforced Disappearances and Mass Graves

One of the most disturbing aspects of the human rights situation in Kashmir is the phenomenon of enforced disappearances. The term "enforced disappearance" has a specific legal meaning in international law: it refers to the arrest, detention, or abduction of a person by agents of the state, followed by a refusal to acknowledge the deprivation of liberty or to reveal the fate or whereabouts of the disappeared person, thereby placing the person outside the protection of the law.

Enforced disappearances in Kashmir have been documented by multiple Indian and international organizations. The Association of Parents of Disappeared Persons (APDP) in Kashmir has maintained records of disappearances going back to the early 1990s and has documented thousands of cases. The State Human Rights Commission of Jammu and Kashmir, in a report of 2012, confirmed the existence of unmarked graves in North Kashmir, acknowledging that the graves contained the bodies of unidentified persons, many of whom were likely victims of enforced disappearance.

A 2009 report by the International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir documented 2,700 mass graves in the three districts of Baramulla, Bandipora, and Kupwara alone. The report concluded that the graves contained the bodies of thousands of individuals, many of whom were victims of extrajudicial killings, torture, or enforced disappearance. The Indian government dismissed the report, but subsequent investigations by Kashmiri civil society organizations largely confirmed its findings.

India is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the UN General Assembly in 2006. This is particularly significant given the scale of enforced disappearances in Kashmir. The refusal to ratify this Convention is consistent with a broader pattern of India's resistance to international human rights accountability mechanisms, discussed further in the chapter on India's relationship with international human rights law.

The crime of enforced disappearance is recognized as a crime under customary international law and, when committed as part of a widespread or systematic attack on a civilian population, may constitute a crime against humanity under the Rome Statute. India is not a party to the Rome Statute of the International Criminal Court, another significant gap in its international legal accountability framework.

CHAPTER FIVE: CASTE, DALITS, AND THE DEEPEST STRUCTURAL VIOLATION

5.1 Caste as Human Rights Violation: Philosophical and Legal Analysis

The caste system is the foundational structural violation in Indian society. It is older than any current Indian legal system, older than colonialism, older than the medieval period. In its origins, it was a system for organizing the social division of labor, assigning hereditary occupational

roles to endogamous social groups. In its historical development, it became something far more pervasive and more brutal: a comprehensive system for the distribution of dignity, rights, opportunity, safety, and humanity itself, organized entirely on the principle of birth.

At the bottom of the caste hierarchy are the communities formerly described as "untouchable," now known officially as Scheduled Castes and referred to most powerfully in Ambedkar's terminology as Dalits, from the Marathi word meaning "broken" or "oppressed." Dalits number approximately two hundred million in India, roughly sixteen percent of the population. For the entirety of India's history, they have been assigned the most degrading occupations, including the disposal of human waste (manual scavenging), the handling of dead animals and human bodies, and other work considered ritually polluting. They have been denied access to public spaces, water sources, temples, and schools. They have been subjected to violence for perceived violations of caste norms, including violence for having the temerity to ride a horse at one's own wedding, to wear good clothes, to cut one's hair in a particular style, or to drink water from a well used by upper-caste members.

The Constitution abolished untouchability in Article 17 and prohibited caste-based discrimination in Article 15. The Protection of Civil Rights Act of 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, amended in 2015, provide criminal penalties for acts of caste discrimination and violence. The reservation system, which reserves a proportion of seats in public employment and educational institutions for Scheduled Castes and Scheduled Tribes, represents the most ambitious affirmative action program in the world.

And yet the reality of Dalit life in India in 2024 and 2025 bears little resemblance to the constitutional promise. The National Crime Records Bureau reported over 57,000 crimes against Scheduled Castes in 2022, including thousands of cases of assault, murder, rape, and other serious violence. And these are only the reported cases; the actual figure is almost certainly far higher because of widespread underreporting due to police complicity in caste-based violence, fear of retaliation, and distrust of legal institutions.

The 2025 Human Rights Watch report documented multiple specific incidents. Three young men in Uttar Pradesh forced a fifteen-year-old Dalit boy to drink urine. Railway police officials in Madhya Pradesh beat a Dalit woman and her fifteen-year-old grandson. A twenty-year-old Dalit nurse was raped by a doctor in a private hospital in Uttar Pradesh. A teacher killed nine-year-old Indra Kumar Meghwal, a Dalit child in Rajasthan, for drinking from a water pot designated for upper-caste students in 2022, an incident that drew brief national attention before being overshadowed by other news.

Manual scavenging, the most extreme expression of caste-based degradation, in which individuals are forced by caste assignment and economic desperation to clean dry latrines and sewers by hand, has been prohibited by law since 1993 and again under the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act of 2013. But it continues. The National Commission for Safai Karamcharis estimated in 2020 that there were still hundreds of thousands of manual scavengers in India, almost all Dalit. The deaths of sanitation workers in sewer-related accidents, overwhelmingly Dalit workers, number in the hundreds annually,

because they are sent into sewers without adequate safety equipment in violation of both the 2013 Act and basic occupational safety regulations.

5.2 Dalit Women: The Intersection of Caste and Gender Oppression

Dalit women occupy the worst position in India's interlocking hierarchies of caste, class, and gender. They face the full weight of caste discrimination combined with the pervasive sexual violence and economic exploitation experienced by all women in India, and they face it without the protection of class privilege or upper-caste social networks.

The rape of Dalit women by upper-caste men has historically functioned as a mechanism of caste control, a demonstration of dominance and a humiliation of the entire Dalit community through the violation of its women. This use of sexual violence as social control is not metaphorical: it is documented in thousands of cases. The failure of police to register FIRs (First Information Reports) for rape complaints from Dalit women is a persistent and documented pattern. The medical evidence in rape cases is routinely mishandled or ignored. The criminal justice system, dominated at every level by upper-caste individuals, operates as a mechanism for protecting perpetrators rather than victims.

The Hathras gang rape case of September 2020 brought these realities to national and international attention with horrifying clarity. A nineteen-year-old Dalit woman was allegedly gang-raped and brutally assaulted by four upper-caste men in Hathras district, Uttar Pradesh. She died of her injuries in Delhi on September 29, 2020. What followed made the case even more shocking: the Uttar Pradesh police cremated the woman's body in the middle of the night without the consent or presence of her family, apparently to prevent evidence collection and to suppress the case. The police initially refused to register an FIR for rape, suggesting the victim had fabricated the assault. The family was placed under what amounted to house arrest by the local administration. Journalists attempting to reach the village were detained by police.

The Hathras case is an extreme example but it illustrates systemic realities. The combination of caste privilege for perpetrators, caste-based dismissal of victims' testimony, institutional complicity in cover-ups, and the weaponization of state power to suppress accountability, are features of the system, not aberrations from it.

5.3 Reservation, Backlash, and the Politics of Caste Mobilization

The reservation system, while crucial and often life-changing for beneficiaries, has also generated a powerful upper-caste backlash that has periodically taken violent form. The implementation of the Mandal Commission recommendations in 1990, which extended reservations in central government employment to Other Backward Classes, triggered nationwide protests by upper-caste students, including self-immolations. Similar, if less dramatic, backlash has accompanied every extension of reservation policies.

The political economy of reservation politics is complex. The BJP and its associated organizations in the RSS family have historically been hostile to reservation policies, drawing their primary base from upper-caste Hindu communities and advocating for "meritocracy" over

affirmative action. But the political necessity of attracting lower-caste votes has led to a more complex and often opportunistic approach, in which the BJP publicly supports reservations for Scheduled Castes and Scheduled Tribes while covertly or overtly undermining their implementation.

The Modi government's record on Dalit rights is deeply contradictory. Prime Minister Modi himself has emphasized "sabka saath, sabka vikas" (development for all) as a slogan and has made high-profile gestures toward Dalit inclusion, including hugging sanitation workers at public events. But at the same time, the government's policies in multiple domains have deepened Dalit disadvantage. The privatization of public sector enterprises reduces the proportion of jobs covered by reservation mandates. The rollback of labor protection laws weakens the position of the most vulnerable workers, who are disproportionately Dalit. The attacks on universities, including Hyderabad Central University, where the institutionalized murder of Rohith Vemula, a Dalit Ph.D. scholar, through systematic academic and social exclusion drove him to suicide in January 2016, revealed the failure of affirmative action in education to transform the institutional cultures that reproduce caste discrimination.

CHAPTER SIX: RELIGIOUS MINORITIES UNDER THE HINDU NATIONALIST PROJECT

6.1 The Ideological Framework: Hindutva and Its Consequences

The Hindu nationalist ideology known as Hindutva, derived from the Sanskrit for "Hindu-ness," was given systematic philosophical form by Vinayak Damodar Savarkar in his 1923 pamphlet "Hindutva: Who is a Hindu?" Savarkar's conception of Hindutva was explicitly ethnic and territorial rather than religious: a Hindu, in Savarkar's definition, is one for whom India is both a pitribhumi (fatherland) and a punyabhumi (holy land). The explicit implication of this definition is that Muslims and Christians, whose holy lands are Mecca and Jerusalem respectively, cannot be fully Hindu in this national sense and therefore cannot be fully Indian. They are permanently guests or aliens in the Hindu homeland.

This ideology was subsequently developed by M.S. Golwalkar, the second head of the Rashtriya Swayamsevak Sangh (RSS), the paramilitary organization founded in 1925 that is the ideological parent of the BJP and of dozens of affiliated organizations collectively known as the Sangh Parivar or RSS family. Golwalkar's 1939 work "We or Our Nationhood Defined" expressed the relationship between Hindu nationalism and religious minorities with a clarity that makes explicit what more recent Hindutva ideologists prefer to leave implicit: religious minorities in India should either assimilate completely to the Hindu majority culture, remain in the country as second-class citizens, or leave.

Golwalkar explicitly cited Nazi Germany's treatment of Jews as a model that India could learn from, a passage that has been repeated by critics of the RSS and dismissed by its defenders as either taken out of context or repudiated in Golwalkar's later writings. What is not in dispute is that the RSS's ideological framework treats India's Muslim minority of approximately two

hundred million people as a fifth column, a permanent security threat, and a cultural contamination that must be managed or removed.

This ideology has been progressively translated into policy, law, and social practice since the BJP won a parliamentary majority under Narendra Modi in 2014 and increased its majority in 2019. The 2024 elections, in which the BJP lost its outright majority and had to govern in coalition, produced some initial commentary suggesting a moderation of Hindu nationalist politics. Those hopes have not been borne out. The targeting of Muslims through mob violence, property demolitions, discriminatory legislation, and exclusionary rhetoric has continued and in some respects intensified.

6.2 The Citizenship Amendment Act: Religion and Citizenship

The Citizenship Amendment Act of December 2019 is the most constitutionally significant legislation enacted by the Modi government, and the most direct legislative expression of the view that Muslims occupy a different and inferior position in the Indian national community.

The CAA amends the Citizenship Act of 1955 to allow undocumented migrants from Afghanistan, Bangladesh, and Pakistan who belong to the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian religious communities to apply for Indian citizenship after five years of residence rather than the eleven years required under the general rule. The critical feature of the Act is what it excludes: Muslims. No Muslim migrant, regardless of the nature of the persecution they face in their country of origin, is eligible for the accelerated citizenship pathway.

The government's justification for the exclusion of Muslims is that Muslims cannot be minorities persecuted on the basis of religion in countries that are constitutionally Islamic, namely Afghanistan, Bangladesh, and Pakistan. But this justification is both factually incorrect (Ahmadis, Shia Muslims, Hazaras, and other Muslim minorities face severe religious persecution in these countries) and legally irrelevant (the protection of persecuted minorities does not depend on whether the country of origin is constitutionally Islamic). The real purpose of the exclusion is the creation of a category distinction in Indian law based on religion, specifically treating Muslims as ineligible for a legal benefit available to all other religious communities.

The constitutional challenge to the CAA has been pending in the Supreme Court since 2019. The petitioners argue that the Act violates Article 14 (equality before the law) because the exclusion of Muslims is arbitrary and discriminatory, and violates Article 15 (prohibition of discrimination on grounds of religion) because the Act explicitly classifies people differently on the basis of religion. The government argues that the classification is based on the religious character of the countries of origin, not on the religion of the migrants themselves, a distinction that even sympathetic commentators have found unconvincing.

The CAA takes on an additional menace in combination with the National Register of Citizens exercise. The NRC was implemented in Assam through a court-supervised process that culminated in the exclusion of approximately 1.9 million people from the register in 2019. The fear, explicitly articulated by Home Minister Amit Shah, is that a nationwide NRC would identify millions of "illegal immigrants" who would then lose their citizenship rights. The CAA

creates a pathway for non-Muslim "illegal immigrants" to regularize their status; no such pathway exists for Muslims. The combination of a nationwide NRC and CAA would therefore create a mechanism for stripping large numbers of Indian Muslims of citizenship without any individual determination of their actual legal status.

The demographic and political implications of this combination are difficult to overstate. India's Muslim population of approximately two hundred million represents the world's second or third largest Muslim population. Many of these individuals, particularly those from the poorest and most marginalized communities in states like Assam, West Bengal, and Bihar, may lack the documentation required to establish their citizenship status, not because they are not citizens but because the systematic exclusion of poor and marginalized communities from bureaucratic systems means they have never had proper identity documents.

6.3 Bulldozer Justice and Property Rights

The practice that has been termed "bulldozer justice" by its critics and celebrated by its proponents in the Hindu nationalist movement represents a particularly clear example of the weaponization of administrative power for the purpose of religious discrimination. The practice involves the demolition of buildings, houses, shops, and other structures belonging to individuals accused of crimes or belonging to communities that are the targets of police action, typically Muslim communities.

The legal basis claimed for these demolitions is that the structures are unauthorized or illegal under municipal building regulations. And it is true that unauthorized construction is extremely common across Indian cities, in every community and religion, because the combination of bureaucratic complexity, expense, and corruption makes formal compliance with building regulations extremely difficult for ordinary people. The use of building violations as a pretext for demolition is therefore highly selective: virtually every neighborhood in every Indian city contains unauthorized construction, but the demolitions are concentrated in Muslim neighborhoods.

The pattern is documented in meticulous detail. According to the 2025 review by the South Asia Justice Campaign noted in the TRT World report, between January and March 2025 alone, more than 7,400 homes were demolished across India, rendering over 41,000 people homeless, with approximately 37 percent of those demolitions targeting Muslims. The Muslim population of India is approximately 14 percent of the national total. A group constituting 14 percent of the population experiencing 37 percent of demolitions is statistical evidence of targeted discrimination.

The Supreme Court addressed this practice in a judgment of October 2024, holding that executive authorities cannot demolish a building merely because the owner or occupant is an accused in a criminal case, and that proper legal procedures must be followed before any demolition. The Court specifically noted that the demolition of a person's home as a response to their alleged criminal activity is extrajudicial punishment, a form of collective punishment visited on the family of the accused, and is incompatible with the rule of law. The Court's direction was explicit and comprehensive.

Despite this, demolitions continued in 2025 in multiple BJP-governed states. The Supreme Court's authority was ignored with a brazenness that has become characteristic of the relationship between the executive and the judiciary in the BJP era. In August 2025, Human Rights Watch reported that the BJP Chief Minister Himanta Biswa Sarma's government in Assam had conducted at least seven demolition drives in July and August, displacing over 5,000 families, a majority of whom were Bengali-speaking Muslims.

6.4 Cow Vigilantism, Mob Lynching, and State Complicity

The phenomenon of "cow vigilantism" represents the organized, violent enforcement of Hindu caste and religious norms through mob action, with the complicity or active encouragement of state actors. The cow is sacred in Hindu tradition, and several Indian states have laws prohibiting the slaughter or transportation of cattle. But the application of these laws, and the violence associated with them, has been overwhelmingly directed at Muslims, who may legitimately consume beef as part of their religious and dietary practices, and at Dalits, who traditionally handle dead animals including cattle.

The pattern of cow-related violence, mob attacks on individuals suspected of possessing or transporting beef, has intensified dramatically since 2014. A 2024 assessment cited in the Congressional Research Service report found that cow vigilantism was the single most common motivator for communal violence targeting Muslims, accounting for 22 percent of such incidents from mid-2019 to mid-2024. The victims of these attacks are beaten, often with extreme brutality, and in dozens of cases killed. The attackers are frequently organized members of Sangh Parivar organizations, some operating explicitly as "cow protection" groups with connections to BJP elected officials.

The state's response to these attacks has been, in BJP-governed states, deeply complicit. Police in multiple incidents have filed cases against the victims of mob violence, on charges of cattle transportation or possession, rather than against the mob members who attacked them. In some cases, police have been present during attacks and have taken no action to protect the victims. In the Pehlu Khan case, a Muslim dairy farmer beaten to death by a mob in Rajasthan in April 2017 while transporting cattle he had purchased legally, all six accused were acquitted by a trial court in 2019 on the basis that the prosecution had failed to prove its case, despite photographic and video evidence and the dying declaration of the victim.

The IAMC 2026 Annual Report documented that throughout 2025, hundreds of lynchings, rapes, and assaults on religious minorities occurred across India, many of them carried out by members of paramilitaries belonging to the Sangh Parivar. The report described gruesome lynchings playing out across India's highways.

6.5 Anti-Conversion Laws and the Attack on Religious Freedom

The freedom of religion, guaranteed by Articles 25 through 28 of the Indian Constitution, protects not only the right to hold religious beliefs but also the right to propagate religion and, implicitly, the right to change one's religion. The Universal Declaration of Human Rights is

explicit that freedom of religion includes the freedom to change one's religion or belief, as is Article 18 of the ICCPR.

At least twelve of India's twenty-eight states have enacted "anti-conversion" laws, also called "freedom of religion" laws, that prohibit religious conversion achieved through "force, fraud, or allurement." The premise of these laws is that conversion from Hinduism is inherently suspicious and likely to involve improper inducement, while no equivalent suspicion attaches to the expansion of Hinduism through reconversion programs called "ghar wapsi" (homecoming). The application of these laws has been consistently directed at Christians and Muslims who are involved in proselytizing or who have converted from Hindu-background communities.

Human Rights Watch's 2025 report documented that Hindu extremist groups targeted Dalit and tribal Christians in multiple states, with attacks including physical assault, social boycotts, and economic isolation. A group of Hindu men attacked a pastor in Chhattisgarh state. A militant mob attacked a prayer congregation in Madhya Pradesh, beating men and children. These attacks are facilitated by anti-conversion laws that give Hindu nationalist groups a legal framework within which to file complaints against Christian activities, triggering police investigations and creating an atmosphere of threat around Christian communities.

The specific targeting of Dalit and Adivasi converts is significant. Many Dalits have converted to Christianity or Buddhism as an expression of their rejection of the Hindu caste hierarchy that has oppressed them. The violence against Dalit Christian communities is therefore not merely religious discrimination: it is an attack on the most powerful form of resistance available to those at the bottom of the caste hierarchy, the assertion of a religious identity that explicitly rejects the theology of caste.

CHAPTER SEVEN: THE NORTHEAST AND ADIVASI RIGHTS

7.1 The Northeast: Colonial Frontiers and Continuing Conflict

India's northeastern region, consisting of eight states connected to the main landmass by the narrow Siliguri Corridor or "Chicken's Neck," is one of the most ethnically, linguistically, and culturally diverse regions in the world. It is also one of the most conflict-affected, with multiple armed insurgencies, ethnic conflicts, and inter-community violence operating simultaneously in different states. The human rights situation in the northeast is serious and largely neglected in national and international discourse.

The AFSPA has been in continuous operation in multiple northeastern states for decades, and in some states since its original enactment in 1958. Nagaland, Manipur, and Assam have been under the AFSPA for over sixty years. The consequences of six decades of AFSPA operation for civil life in these states, including the normalization of military presence, the suppression of civil society, the torture and killings that have never been prosecuted, and the trauma visited on generations of civilians, are difficult to quantify but impossible to overstate.

The Manipur conflict of 2023, which began in May of that year and continued into 2025, represents one of the most serious humanitarian crises in India in recent decades. The conflict between the predominantly Christian Kuki-Zo community and the mostly Hindu Meitei community, with the BJP-governed state government aligned with the Meitei position, has resulted in hundreds of deaths, the displacement of tens of thousands of people, the destruction of villages, and well-documented atrocities by both sides and by state security forces. A particularly disturbing incident was the July 2023 video, which spread virally on social media, showing a Meitei mob parading two Kuki-Zo women naked through a village while police officers watched without intervening.

The Supreme Court responded to the Manipur situation with unusual directness, appointing a judicial committee to investigate the atrocities and calling for accountability. But the fundamental problem, which is that the BJP-governed state government has made no credible effort to protect the Kuki-Zo community or to hold perpetrators accountable, has not been resolved. In September 2024, renewed ethnic violence killed at least eleven more people, and students and others who protested were met with police force.

The response to the Manipur crisis illustrates a pattern of central government indifference to ethnic and communal violence in the northeast when the victims are communities that are not politically significant to the BJP. The same indifference has characterized the response to the Bodo-Muslim conflicts in Assam, to the Naga-Meitei tensions in Manipur, and to the periodic violence between different communities in Meghalaya and Arunachal Pradesh.

7.2 Adivasi Rights and the Maoist Conflict

The conflict in central India between security forces and the Communist Party of India (Maoist), also known as Naxalites, is the longest-running armed conflict in India's post-independence history, predating the Kashmiri insurgency. It is rooted in one of the most fundamental human rights violations in India: the systematic dispossession of Adivasi communities from their ancestral lands and forests through the combined mechanisms of colonial forest laws, post-independence development projects, and corporate resource extraction.

The Forest Rights Act of 2006, which the UPA government enacted in recognition of what the Act itself describes as the "historical injustice" done to Adivasi communities by the reservation of forest lands without recognition of their traditional rights, represented a serious attempt to address Adivasi dispossession. The Act provides for the recognition of forest rights of individual and community holders of Scheduled Tribes and other traditional forest dwellers, including the right to continue cultivating forest land, to collect non-timber forest produce, and to protect and manage community forest resources.

But the implementation of the Forest Rights Act has been deeply inadequate. The process of recognition has been riddled with bureaucratic obstruction, corruption, and active resistance from forest departments that have historically treated forest land as their exclusive domain. Millions of eligible claimants have been rejected without adequate grounds. The Supreme Court in 2019 initially issued an order that could have resulted in the eviction of millions of Adivasi families

whose claims had been rejected under the Act, before staying the order following public outcry. The underlying problem of non-recognition and potential eviction has not been resolved.

In this context of dispossession and neglect, the Maoist movement has found support among Adivasi communities in the forested belts of Chhattisgarh, Jharkhand, Maharashtra, and Odisha. The security forces' response to the Maoist presence has repeatedly involved collective punishment of Adivasi communities: the labeling of entire villages as "Maoist areas," the detention and torture of Adivasi men on suspicion of Maoist support, the killing of Adivasi civilians labeled as Maoists in "encounter" killings, and the displacement of communities in the name of security operations.

The Human Rights Watch 2026 World Report documented that security forces escalated counterinsurgency operations against Maoist insurgents from January 2024, intensifying their presence across central and eastern India, particularly in Chhattisgarh's Bastar district. By July 2025, security forces claimed to have killed 460 alleged Maoists since the operations began, while civil society groups alleged widespread abuses against Adivasi villagers, including extrajudicial killings. The authorities targeted human rights activists on politically motivated charges, accusing them of being Maoists or Maoist supporters.

The conflation of Adivasi political activism, which challenges the dispossession of Adivasi communities, with Maoist militancy is a systematic and deliberate state strategy. It allows the state to use the UAPA against Adivasi rights defenders, to justify killing civilian activists in "encounters," and to suppress any challenge to the corporate-military-political nexus that benefits from continued Adivasi dispossession. The Bhima Koregaon accused, discussed earlier, include several individuals who had done significant work on Adivasi rights.

CHAPTER EIGHT: INDIA AS A REGIONAL POWER: HEGEMONY, COERCION, AND HUMAN RIGHTS

8.1 The Doctrine of Regional Hegemony and Its Costs

India is not only a state that violates the human rights of its own citizens. It is also a regional power that exercises its economic, political, and military weight over its smaller neighbors in ways that frequently constitute violations of international law and that directly or indirectly harm the populations of those neighbors. Understanding India's external behavior is essential to understanding the full scope of the human rights challenges in South Asia.

India's neighbors, with the exception of China, are all smaller, economically weaker, and strategically more vulnerable than India. Pakistan, Bangladesh, Nepal, Sri Lanka, Bhutan, and the Maldives all share land or maritime borders with India and are deeply affected by Indian policy in domains ranging from trade to water management to security. The structural inequality between India and its neighbors creates a relationship that is necessarily asymmetric, and the question of how India manages that asymmetry has profound implications for regional stability and for the welfare of populations across South Asia.

The concept of hydro-hegemony, developed by Mark Zeitoun and Jeroen Warner in their influential 2006 paper "Hydro-Hegemony: A Framework for Analysis of Trans-boundary Water Conflicts," provides a useful analytical framework. Hydro-hegemony exists when a single state within a shared river basin asserts control over the basin's resources in ways that serve its own interests at the expense of other riparian states. India's position in South Asian water relations exhibits many characteristics of hydro-hegemony, though the picture is more complex than a simple hegemony framework suggests.

The academic literature published in 2025 is particularly instructive. Farhana Sultana's paper "From Hydro-Hegemony to Hydro-Coercion: Politics of Precarity in India-Bangladesh Transboundary Water Conflicts," published in December 2025, advances the concept of "hydro-coercion" to analyze how asymmetric power relations shape transboundary water governance between India and Bangladesh. The concept of hydro-coercion is more specific than hydro-hegemony: it captures the active use of water control as a tool of political pressure, rather than the more passive exercise of structural power that hegemony analysis captures.

The January 2026 report from The Conversation on India-Pakistan water conflicts noted that India's strained water relations are not limited to Pakistan: Bangladesh and Nepal have often felt sidelined or pressured in negotiations, and India's indication that it may reconsider longstanding treaties raises concerns in both countries. The Ganges Water Treaty nears its 2026 expiration, and the uncertainty about its renewal is a source of significant anxiety in Bangladesh, where the Ganges (Padma) irrigates much of the country's agricultural land.

8.2 The India-Bangladesh Water Relationship: Farakka and Its Consequences

The Farakka Barrage, constructed by India on the Ganges River approximately ten miles from the Bangladesh border and commissioned in 1975, is the most significant and most contested expression of India's water management approach toward Bangladesh. The barrage was constructed ostensibly to flush sediment from the port of Calcutta (now Kolkata) by diverting a portion of the Ganges flow through the Hooghly River. The actual consequences for Bangladesh have been severe and well-documented.

The diversion of water through the Farakka feeder canal reduces the flow of the Padma River, which is the Ganges within Bangladesh, particularly during the dry season (November to May) when water scarcity is already most acute. The reduced dry-season flow has been associated with: the salinization of agricultural land in southwestern Bangladesh, as seawater from the Bay of Bengal moves further upstream; the shrinkage and degradation of the Sundarbans mangrove forest, one of the world's most important biodiversity hotspots; the desiccation of rivers and waterways in the affected region, reducing fish stocks and affecting the livelihoods of millions of fishermen; and the disruption of navigation in the inland waterway system.

The Ganges Water Treaty of 1996, signed between India and Bangladesh, established a formula for sharing Ganges water flows at Farakka during the dry season. But the Treaty has not resolved the underlying tension, for several reasons. The guaranteed flows under the Treaty are calculated on the basis of historical data that may not reflect climate change-affected future flows. India's actual releases have not always met Treaty obligations. The Treaty does not address the broader

impacts of Farakka on the downstream ecosystem. And the Treaty is silent on numerous other transboundary water issues between the two countries.

The August 2024 floods in Bangladesh dramatically illustrated the consequences of India's unilateral management of shared water resources. According to the Conversation report, devastating floods affected nearly 5.8 million people in Bangladesh in August 2024, with some Bangladeshi officials accusing India of releasing excess water from a large dam upstream without warning. India denied responsibility, citing extreme rainfall and standard dam operations. Whether or not the Indian denial was accurate in this specific instance, the broader pattern of India's unilateral management of shared water resources without adequate notification or consultation is well established.

The Teesta River water-sharing agreement is another long-running source of friction. The Teesta originates in Sikkim, flows through West Bengal, and then enters Bangladesh, where it is a major water source for north-central Bangladesh. A water-sharing agreement between India and Bangladesh has been under negotiation for decades and has been close to finalization on multiple occasions, most recently in 2011 when it was blocked at the last moment by the West Bengal Chief Minister's objection. The agreement remains unsigned, leaving Bangladesh without any legal entitlement to a minimum flow from the Teesta during the dry season.

8.3 Nepal and the Kosi Treaty: Historical Exploitation

India's water relationship with Nepal is similarly characterized by asymmetry and historical grievance. Nepal is an upstream riparian on all the major rivers, including the Kosi, the Gandak, and the Mahakali, that originate in the Himalayas and flow through India to Bangladesh. This gives Nepal a geographical position of potential leverage. But India's overwhelming economic and political weight has consistently prevented Nepal from translating its geographical position into actual bargaining power.

The Kosi Treaty of 1954, signed between India and Nepal, and the Gandak Treaty of 1959 are the primary instruments governing bilateral water relations on these rivers. Both have been extensively criticized by Nepali scholars, politicians, and civil society organizations as deeply unfavorable to Nepal. The Kosi Treaty, in particular, has been called a "Farakka for Nepal" by critics who argue that the management of the Kosi barrage under the Treaty has served Indian interests at the expense of Nepal.

The Kosi River is known in Nepal as the "sorrow of Bihar" (Bihar being the Indian state most affected by its periodic devastating floods) but could equally be called the sorrow of eastern Nepal, where the river's management under the Treaty has contributed to chronic flooding. The catastrophic Kosi flood of August 2008, in which the river broke its embankment and changed course, affecting approximately four million people in Nepal and India, was preceded by allegations by Nepali experts that the maintenance of the Kosi barrage by India had been inadequate and that warnings had been ignored.

Nepal has repeatedly sought to renegotiate both the Kosi and Gandak treaties on more equitable terms, without success. The unequal treaty framework, combined with India's resistance to renegotiation, illustrates the power asymmetry that has characterized India-Nepal water relations.

8.4 The Economic Blockade of Nepal: Coercion as a Tool of Regional Policy

Beyond water, India has demonstrated a willingness to use economic coercion as a tool of regional policy in ways that directly harm the populations of its smaller neighbors. The most egregious example is the unofficial blockade of Nepal imposed by India in 2015 and 2016.

In September 2015, Nepal adopted a new constitution following years of political transition after the end of the civil war and the overthrow of the monarchy. The constitution was the product of a democratic constituent assembly process, though it was criticized by Madhesi communities in the Tarai (the plains region bordering India) who felt it did not adequately protect their rights and interests. India expressed displeasure with the constitution and supported Madhesi protests against it.

What followed was an effective economic blockade: Indian trucks stopped delivering essential goods, including fuel and medicines, to Nepal through the border crossing at Raxaul, the primary route for Nepal's imports. The blockade lasted for approximately five months, from late September 2015 to early February 2016, causing a catastrophic humanitarian crisis in a country that was already struggling with the aftermath of the devastating April 2015 earthquake. Fuel shortages grounded ambulances, shut down hospitals, stopped agricultural vehicles during the harvest season, and forced factories to close. Medicine shortages threatened the lives of patients with chronic conditions.

India consistently denied imposing any official blockade, maintaining that the stoppage of goods was the result of Madhesi protests that were blocking border roads. But the timing, the comprehensiveness, and the pattern of the disruption convinced virtually all observers that the Indian government was at least facilitating and certainly not preventing the blockade. Nepal's Foreign Minister at the time explicitly stated that India was using the blockade to pressure Nepal to change its constitution.

If the analysis is correct that India imposed or facilitated the blockade, it constitutes a serious violation of international law. The right to development, recognized in the UN Declaration on the Right to Development of 1986, and the International Covenant on Economic, Social and Cultural Rights, to which India is a party, create obligations with respect to the economic welfare of populations in neighboring states that are in a relationship of economic dependence. More specifically, if the blockade was intentionally imposed for political purposes, it may constitute the violation of Nepal's right to self-determination, specifically the right to freely determine its political status, which Article 1 of the ICCPR places as the foundation of all other rights.

The blockade has had lasting consequences for India-Nepal relations, including significantly strengthening the political position in Nepal of those who argue for closer ties with China as a counterweight to Indian dominance. The opening of new Chinese transit routes to Nepal and the

increasing presence of Chinese investment in Nepali infrastructure are partly a consequence of Nepal's determination to reduce its dependence on India following the 2015-2016 experience.

8.5 The India-Sri Lanka Question and Tamil Rights

The Indian Ocean dimension of India's regional behavior is illustrated by the India-Sri Lanka relationship, particularly as it relates to the rights of Tamil minorities and the conduct of the Sri Lankan state in the final phase of the civil war against the Liberation Tigers of Tamil Eelam (LTTE). India's role in this relationship is particularly complex and reflects the intersection of domestic political considerations (the Tamil Nadu state constituency) with geopolitical strategy.

India's record on Tamil rights in Sri Lanka has been inconsistent and often contradictory. In the 1980s, India actively supported Tamil militant groups, including the LTTE, providing training, arms, and sanctuary in Tamil Nadu. India's motivation was partly sympathetic to Tamil minority rights and partly strategic, using Tamil militancy as leverage over the Sri Lankan state. The Indo-Sri Lanka Accord of 1987 represented an attempt to resolve the conflict through a devolution framework, combined with the controversial deployment of the Indian Peace Keeping Force (IPKF), which ended in disaster and significantly alienated Tamil communities in Sri Lanka.

In the final phase of the civil war in 2009, when the Sri Lankan military was conducting massive operations against the remaining LTTE forces and the Tamil civilian population in the Vanni region, India's position was deeply unsatisfactory from a human rights perspective. India opposed an emergency special session of the UN Human Rights Council to address the situation, and its diplomatic support for the Sri Lankan government at a critical moment arguably enabled the final military campaign, in which tens of thousands of Tamil civilians were killed, to proceed without international intervention.

The subsequent accountability process has been inadequate. The Darusman Report, commissioned by UN Secretary-General Ban Ki-moon and published in 2011, documented credible allegations that both the LTTE and Sri Lankan security forces committed war crimes and crimes against humanity in the final phase of the conflict. India's support for Sri Lanka in subsequent UN processes has prevented the establishment of a fully independent international accountability mechanism. The treatment of fishermen from Tamil Nadu who fish in waters claimed by Sri Lanka continues to be a source of tension, with Sri Lankan authorities periodically arresting and sometimes injuring or killing Tamil Nadu fishermen.

8.6 Bhutan, the Maldives, and the Smaller Neighbors

India's relationships with Bhutan and the Maldives illustrate different dimensions of its regional behavior. Bhutan is, in formal terms, in a treaty relationship with India that severely constrains its foreign policy autonomy: the 2007 Treaty of Friendship between India and Bhutan provides that Bhutan will be guided by India in its external relations, a provision that effectively makes Bhutan a protectorate. Bhutan has no diplomatic relations with any of the five permanent members of the UN Security Council, including China, largely because India has insisted on this limitation.

The Bhutan-China border negotiations, which have been ongoing for decades, are deeply affected by Indian interests in the tri-junction area involving India, China, and Bhutan. India has effectively insisted on being a party to, or at least having a veto over, any resolution of the Bhutan-China border that affects the Indian strategic interests at the Doklam plateau. In 2017, Indian and Chinese forces engaged in a prolonged standoff at Doklam, a territory claimed by both Bhutan and China, with India intervening militarily on Bhutan's behalf. Bhutan had not publicly requested Indian intervention, and some Bhutanese commentators have noted that Bhutan was not fully consulted about India's decision to intervene militarily in a territory dispute to which Bhutan was the primary party.

The Maldives has been subject to Indian pressure in its domestic politics in ways that raise serious concerns about respect for sovereignty. The rapid response of Indian military aircraft to the November 2011 coup attempt that briefly detained President Nasheed, and the subsequent Indian diplomatic support for Nasheed, was generally seen as appropriate support for democracy. But India's willingness to intervene in Maldivian domestic politics has not always been oriented toward democratic principles. The pressure India has applied regarding the presence of Chinese infrastructure investment in the Maldives, and the attempts to influence the outcomes of Maldivian elections, are exercises of Indian power that may cross the line from legitimate diplomatic engagement into interference in the internal affairs of a sovereign state.

CHAPTER NINE: INDIA AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM

9.1 India's Treaty Obligations and Their Systematic Evasion

India has ratified a substantial number of international human rights treaties, including the ICCPR, the ICESCR, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention Against Torture (CAT, in 1997 India signed but has not ratified). This formal engagement with the international human rights system creates legally binding obligations and subjects India to periodic review by treaty monitoring bodies.

India's engagement with treaty monitoring bodies is characterized by a pattern of formal participation combined with substantive resistance. India submits periodic reports, participates in review sessions, and responds to questions from treaty body members. But it consistently contests critical findings, resists recommendations for legislative or policy change, and fails to implement recommendations that it does formally accept. The gap between formal participation and substantive compliance is enormous.

The 2024 review of India by the UN Human Rights Committee illustrates this pattern. The Committee raised concerns, following an examination of India's Fifth Periodic Report, about multiple aspects of India's compliance with the ICCPR. These included concerns about discrimination and violence against minority communities, about the use of broad anti-terrorism laws to restrict civil liberties, about impunity for security forces in Jammu and Kashmir and other conflict-affected areas, about restrictions on freedom of assembly and association, and

about conditions of pre-trial detention. The Indian government's response to these concerns was defensive and dismissive, insisting that India's record was being unfairly characterized and that its laws were consistent with international standards.

The Special Procedures system of the UN Human Rights Council, through which independent experts known as Special Rapporteurs investigate specific human rights themes and country situations, is another mechanism through which India has been subject to international scrutiny. Special Rapporteurs covering freedom of expression, freedom of religion, rights of indigenous peoples, torture, human rights defenders, and other themes have all raised concerns about specific situations in India. India's response has typically been to deny specific findings, invoke sovereign prerogatives, and question the accuracy of the information available to the Special Rapporteurs.

India's relationship with the Universal Periodic Review (UPR) process, through which all UN member states are reviewed by their peers in the Human Rights Council, is similarly characterized by formal participation and substantive resistance. In the most recent UPR cycle, India accepted a large number of recommendations in principle while rejecting or noting others. But acceptance of recommendations in the UPR process is not accompanied by binding enforcement mechanisms, and India's compliance with accepted recommendations has been consistently poor.

9.2 India's Opposition to the Rome Statute and International Criminal Accountability

India voted against the adoption of the Rome Statute of the International Criminal Court at the Rome Conference in July 1998, and has not subsequently ratified the Statute. India's objections to the Rome Statute focused on several provisions, including the definition of war crimes to include certain practices employed by states in internal armed conflicts, the powers of the Prosecutor to initiate investigations without a state referral, and the Article 16 provision on UN Security Council referrals and deferrals.

The decision not to ratify the Rome Statute is particularly significant given the nature of the human rights violations documented in Kashmir and in counterinsurgency operations in the northeast. If the killings of civilians by security forces in these contexts meet the threshold of "crimes against humanity" (which requires that they be widespread or systematic and directed against a civilian population), they would fall within the ICC's subject matter jurisdiction under Article 7 of the Rome Statute if India were a state party. The ICC would also have jurisdiction over war crimes committed in the context of armed conflicts that meet the threshold of armed conflicts not of an international character.

India's non-ratification effectively places it outside the ICC's direct jurisdiction for actions on its own territory, although the Court can still exercise jurisdiction over Indian nationals for crimes committed in the territory of states that have ratified the Statute. This is a significant gap in the international accountability framework for India's most serious human rights violations.

The UN Security Council can refer situations to the ICC under Article 13(b) of the Rome Statute regardless of whether the state concerned has ratified the Statute, as happened in the cases of

Sudan (Darfur) in 2005 and Libya in 2011. Any referral of India to the ICC by the Security Council would, however, be vetoed by states that are India's strategic partners, including the United States, France, and the United Kingdom, all of which have extensive strategic and economic ties with India that they are unwilling to jeopardize for the sake of human rights accountability.

This immunity from effective international criminal accountability is not unique to India: several other large democracies with significant human rights problems, including the United States, Israel, and Russia (in different ways), similarly benefit from political protection within the Security Council system. But the absence of effective accountability has real consequences. It allows perpetrators of serious violations to operate without fear of prosecution, reinforcing the culture of impunity that is one of the defining characteristics of India's human rights situation.

9.3 The UN Human Rights Council and India's Defensive Strategy

India has been a member of the UN Human Rights Council for multiple terms and has consistently used its membership to protect itself and allies from scrutiny while supporting resolutions targeting states it opposes. This pattern of using multilateral human rights institutions for geopolitical rather than human rights purposes is not unique to India, but India has been particularly consistent and sophisticated in its approach.

India has consistently voted against country-specific resolutions that would establish investigation mechanisms for alleged human rights violations, including resolutions on Syria, on Belarus, and on situations where India's strategic allies, including Russia, were under scrutiny. This position is ideologically consistent with India's longstanding position that country-specific resolutions are politically motivated and undermine the principle of universality.

At the same time, India's own situations in Kashmir and the northeast have not been subjected to country-specific mechanisms in the Human Rights Council, in part because of India's successful diplomatic effort to avoid such scrutiny and in part because of the reluctance of major powers to sacrifice their bilateral relationships with India for the sake of Human Rights Council processes.

The September 2025 statement from the Human Rights Watch, and the October 2025 news release about India's election to human rights bodies, reflects a broader pattern of what critics call the "election of abusers" to positions of responsibility within the international human rights system. Egypt, Vietnam, and others with poor human rights records were cited in the context of non-competitive votes for human rights positions, illustrating the systemic problem of states using multilateral bodies to protect themselves from scrutiny rather than to advance the human rights of their populations.

9.4 Extraterritorial Operations: The Assassination Program

The most dramatic recent development in India's relationship with international human rights law is the revelation of a program of extraterritorial killings targeting terrorism suspects and political opponents abroad. This program, if the allegations are proven, represents a fundamental violation of international law including the prohibition on extrajudicial killing, the right to life of

the victims, the sovereign equality of the states in whose territory the operations were conducted, and the prohibition on interference in the internal affairs of states.

In June 2023, Canadian Prime Minister Justin Trudeau publicly accused Indian government agents of involvement in the killing of Hardeep Singh Nijjar, a Sikh separatist leader and Canadian citizen, in Surrey, British Columbia in June 2023. India denied any involvement. In October 2023, US authorities indicted Nikhil Gupta, an Indian national, for his alleged role in a plot to assassinate Gurpatwant Singh Pannun, a US citizen and lawyer who is the legal advisor of the Sikh separatist organization Sikhs for Justice. The indictment alleged that an Indian government official had directed the plot.

The United States' allegations were significantly more specific and credibly supported than India's denials. The indictment detailed communications between Gupta and a person identified as an employee of the Cabinet Secretariat of the Government of India, which oversees the Research and Analysis Wing (RAW), India's foreign intelligence agency. The October 2024 public statement from Canada's Royal Canadian Mounted Police on the alleged role of Indian state agents in criminal activity on Canadian soil, including homicide, extortion, and other violence, provided further corroboration.

Canada subsequently expelled Indian diplomats, and India expelled Canadian diplomats, creating the worst diplomatic crisis between the two countries in decades. India's response throughout has been to deny the allegations and to portray Nijjar and Pannun as terrorists who got what they deserved. This response is simultaneously factually questionable (Nijjar, whatever his political activities, had not been convicted of any crime in Canada) and legally irrelevant: the assassination of individuals, regardless of their alleged activities, by agents of a foreign state on the territory of another state without any legal process is a fundamental violation of international law.

The 2024 US Department of State Human Rights Report for India noted the attempts to control the mobility of critics abroad, including revoking benefits accrued to them via travel documents, and the abuse of Interpol blue notices to pursue critics, citing a lawyer who claimed to have worked to block several such notices that violated Interpol rules. This pattern of extraterritorial suppression of dissent represents a qualitative escalation in India's human rights violations that moves beyond the borders of India itself.

CHAPTER TEN: FREEDOM OF EXPRESSION, PRESS, AND ACADEMIC FREEDOM

10.1 The Collapse of Press Freedom

India's ranking in global press freedom indices has fallen dramatically since 2014. Reporters Without Borders ranked India 159th out of 180 countries in the 2024 World Press Freedom Index, a ranking that places it among the world's most restrictive environments for journalism. This dramatic decline from an earlier ranking in the 80s reflects a combination of legal pressure,

economic pressure, physical violence, and the creation of a chilling atmosphere in which self-censorship is the rational response to the risks of journalism.

The legal tools used to suppress journalism are numerous. The UAPA has been used to arrest journalists who have reported from Kashmir, including Fahad Shah and Aasif Sultan. The sedition provision (now replaced) was used against journalists who wrote critically about the government. The IT Act's Section 66A, which criminalized speech deemed offensive or misleading online and was struck down by the Supreme Court in Shreya Singhal v. Union of India in 2015, has been partially replaced by Rule 3(1)(b) of the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, which creates vague categories of prohibited content and empowers government-appointed fact-checking bodies to label content as "false or misleading," requiring its removal.

The economic dimension of press freedom suppression is less visible but arguably more pervasive. Major Indian media organizations are owned by large conglomerates with extensive business interests that are directly affected by government policy. This creates structural pressure on editorial decision-making that does not require explicit government instruction: editors understand that critical coverage of the government risks disrupting the parent company's business interests, and they calibrate their decisions accordingly. This mechanism of economic self-censorship is almost impossible to prove in specific instances but is widely acknowledged in the Indian media community.

The physical dangers faced by journalists, particularly those reporting from conflict zones or on sensitive topics, are also significant. The Committee to Protect Journalists documented multiple cases of journalists imprisoned in India in recent years. Several journalists have been killed in circumstances that suggest connection to their work, though the government has not acknowledged any such connection. The environment of threat and intimidation has made certain kinds of journalism, particularly ground-level reporting on Kashmir, on Maoist-affected areas, and on communal violence, extremely dangerous.

10.2 Academic Freedom and the Attack on Universities

Universities have been another arena of contestation between the Hindu nationalist project and the institutions of critical inquiry. The Jawaharlal Nehru University (JNU) has been the most visible target, partly because of its tradition of left-wing student politics and partly because its research faculties have been prominent critics of Hindu nationalism. In February 2016, Kanhaiya Kumar, then president of the JNU students union, was arrested on sedition charges following a campus event at which slogans allegedly endorsing Kashmiri independence were raised. The case was politically motivated and widely criticized; the charges have not been concluded despite years of legal proceedings.

The death of Rohith Vemula in January 2016, mentioned earlier, crystallized the contradictions of India's approach to caste and higher education. Vemula was a Dalit Ph.D. student at Hyderabad Central University who had been suspended from the university hostel following a complaint by the Akhil Bharatiya Vidyarthi Parishad (ABVP), the student wing of the RSS, related to his activism with the Ambedkar Students Association. His suicide note, which

circulated widely on social media after his death, was a devastating document: "My birth is my fatal accident," he wrote, articulating the experience of being a Dalit in a university system that formally offered him access while informally denying him belonging.

The subsequent investigation into Vemula's death was itself a study in institutional bad faith. The central government initially attempted to argue that Vemula was not in fact a Dalit, which would have removed the caste discrimination dimension from the case. This claim was factually unfounded but politically motivated: if the death were reframed as a personal tragedy rather than a caste atrocity, the institutional and governmental responsibility for it would be obscured.

The more recent phenomenon of "anti-national" accusations against academics, students, and intellectuals who challenge Hindu nationalist narratives represents a broader attack on the university as a site of critical inquiry. The dismissal of faculty members, the appointment of politically aligned candidates to university leadership positions, the defunding of research that produces politically inconvenient findings, and the creation of an atmosphere in which academic freedom can only be exercised at personal cost are all features of the contemporary Indian university landscape.

CHAPTER ELEVEN: WOMEN'S RIGHTS AND GENDER-BASED VIOLENCE

11.1 Rape Law, Institutional Failure, and Political Silence

India's rape law was significantly strengthened following the gang rape and murder of Jyoti Singh in New Delhi in December 2012, an event that sparked massive national protests and a genuine, if ultimately insufficient, moment of political and legal reckoning. The Criminal Law (Amendment) Act of 2013 broadened the definition of sexual assault, enhanced penalties, and created new offenses including voyeurism and stalking. But the legislative reform has not been followed by the institutional transformation necessary to give effect to it.

The failure rate in rape prosecution in India is extremely high. The conviction rate for cases under rape provisions of the IPC was approximately 27 percent in 2022, according to NCRB data, meaning that nearly three-quarters of reported rape cases do not result in conviction. But this already low figure understates the problem, because the proportion of rape incidents that are reported at all is tiny. Estimates of underreporting for sexual violence in India range from 95 to 99 percent, meaning that only one to five in every hundred rapes is ever reported to the police.

The reasons for underreporting are systemic and deeply rooted. The social stigma attached to rape victims, who are often treated by family, community, and institutions as having brought shame on themselves rather than having suffered a crime, deters reporting. The fear of retaliation by perpetrators, particularly when they are powerful individuals or from upper castes, deters reporting. The experience of police dismissal or victim-blaming when reports are made deters subsequent reporting. And the sheer length and trauma of the legal process, which can extend over years and involves repeated exposure to hostile cross-examination, deters victims from pursuing cases even when they do report.

The gang rape and murder in Kolkata of a trainee doctor at RG Kar Medical College in August 2024 produced another wave of national protest. The case illustrated the particular vulnerability of women healthcare workers, who often work night shifts in inadequately secured environments. The response of the West Bengal state government, particularly the initial attempts to cover up the crime and the subsequent attempts to manage public relations rather than address systemic failures, was widely criticized.

The pattern across the high-profile rape cases that have reached national attention, from the 2012 Nirbhaya case to the 2020 Hathras case to the 2024 RG Kar case, reveals consistent features: initial government attempts to minimize or cover up; slow and reluctant police response; institutional resistance to accountability; and legislative and policy responses that address symbols without addressing systems. The legal framework has been repeatedly strengthened; the institutional culture has not changed.

11.2 Muslim Women and Triple Talaq: Rights, Politics, and Community

The Supreme Court's judgment in Shayara Bano v. Union of India in August 2017, which held that the practice of instantaneous triple talaq (the dissolution of a Muslim marriage by a husband pronouncing "talaq" three times in succession) was unconstitutional as being arbitrary and violative of Article 14, and the subsequent Muslim Women (Protection of Rights on Marriage) Act of 2019, which criminalized the practice, are among the most politically complex developments in the intersection of women's rights, minority rights, and religion in Indian law.

The substance of the Supreme Court's reasoning was sound: instantaneous triple talaq gave a husband the power to dissolve a marriage unilaterally and instantaneously, without any obligation to provide for his wife or children, and was practiced in ways that caused immediate and severe harm to women. The Court's conclusion that the practice was arbitrary and unconstitutional was legally defensible and was welcomed by many Muslim women's organizations.

But the political context in which the government chose to criminalize the practice, specifically making the pronouncement of triple talaq a criminal offense punishable by imprisonment, raises serious questions. The government's stated motivation was the protection of Muslim women. Critics, including Muslim women's organizations that had spent decades advocating for reform of Muslim personal law, argued that criminalization of the practice would harm Muslim women by imprisoning their husbands and destroying their families' financial security, and that the real motivation was the stigmatization of Muslim men and the political exploitation of Muslim women's concerns.

The broader context of the government's treatment of Muslim women is relevant here. The same government that enacted the Muslim Women (Protection of Rights on Marriage) Act has overseen an environment in which Muslim women's homes have been demolished, Muslim women's families have been subjected to communal violence, and Muslim women in hijab have been barred from educational institutions in Karnataka. The selective invocation of concern for Muslim women's rights as a justification for policies that in other respects harm the Muslim

community is a form of instrumentalization of women's rights in the service of majoritarian politics.

CHAPTER TWELVE: PRISON CONDITIONS, TORTURE, AND CUSTODIAL VIOLENCE

12.1 The Prison System as a Site of Systemic Violation

India's prison system is one of the clearest expressions of the systematic failure of the constitutional guarantee of human dignity. According to the NCRB's Prison Statistics India report for 2022, India's prisons housed 573,220 prisoners against a certified capacity of 425,609, making the system 134.7 percent over capacity. Overcrowding of this magnitude creates conditions that are inherently dehumanizing: inadequate sleeping space, severely insufficient toilet and hygiene facilities, overcrowded cooking facilities, inadequate ventilation, and heightened risk of disease transmission.

The composition of the prison population illustrates India's criminal justice failures. Approximately 75 percent of the prison population consists of undertrial prisoners, individuals who have not been convicted of any crime and who are being held in pre-trial detention. This means that three-quarters of India's prisoners are, in legal principle, innocent: they have not been found guilty by any court. The length of undertrials' detention can be extraordinary: thousands of undertrial prisoners have spent more time in prison than the maximum sentence for the offense they are alleged to have committed.

The Supreme Court has repeatedly addressed the problem of undertrial detention. The landmark decision in Hussainara Khatoon v. State of Bihar in 1979 established the right to a speedy trial as a component of the right to life under Article 21 and held that persons who had been in pre-trial detention for periods exceeding the maximum sentence for their alleged offense must be immediately released. This decision has been implemented so inadequately that the problem it addressed remains, decades later, as severe as it was when the Court first recognized it.

The treatment of prisoners in Indian jails is consistently documented as involving torture, humiliation, and physical abuse. The Justice Mulla Committee on Prison Reforms, reporting in 1983, documented severe prison conditions and recommended comprehensive reforms. The Justice V.R. Krishna Iyer Committee made similar recommendations in 1987. The Law Commission has made repeated recommendations for prison reform. Almost none of these recommendations has been systematically implemented. State governments, which have primary responsibility for prison administration under India's federal system, have chronically underfunded prison infrastructure and ignored reform recommendations.

Custodial deaths, deaths in police or prison custody, are a particular concern. The National Human Rights Commission records hundreds of custodial deaths annually, noting that the actual figure is likely far higher because of underreporting by police. The causes of custodial death

range from torture and extrajudicial killing to neglect of medical conditions, the latter being a form of deliberate indifference to life that itself constitutes a serious human rights violation.

The death of Father Stan Swamy in judicial custody in July 2021, mentioned earlier, illustrates the intersection of custodial conditions, medical neglect, and politically motivated imprisonment. Swamy, who suffered from Parkinson's disease and was eighty-three years old at the time of his death, had requested a sipper (adapted cup for drinking) to accommodate his tremors. The court took weeks to grant this basic request. When his medical condition deteriorated, requests for his release on medical grounds were denied. His death in custody was, in effect, a death sentence imposed without trial by an administrative system that prioritized keeping him imprisoned over protecting his life.

CHAPTER THIRTEEN: ECONOMIC RIGHTS AND CORPORATE COMPLICITY

13.1 Labor Rights in the Age of Liberalization

India's economic liberalization since 1991 has transformed its economy but has done so in ways that have largely bypassed the most vulnerable workers and have in important respects worsened their conditions. The formal economy, governed by labor laws that provide significant protections, covers only approximately 10 to 15 percent of India's working population. The remaining 85 to 90 percent, including agricultural workers, construction workers, domestic workers, informal sector workers, and workers in the gig economy, are covered inadequately or not at all by labor protections.

The Modi government's labor reforms, which consolidated forty-four labor laws into four Labor Codes and significantly expanded the definition of "small" establishments that are exempt from major labor protections, have been widely criticized by labor unions and human rights organizations as further weakening the position of workers. The Implementation of the Labor Codes, which has been delayed at both the central and state level, is expected to reduce the proportion of workers covered by formal labor protections.

The construction industry, which employs tens of millions of workers in conditions of extreme vulnerability, is a particular concern. Construction workers are predominantly migrant workers, often from Adivasi communities or from the most economically marginalized agricultural areas. They work without contracts, without access to social security benefits, in conditions of severe physical danger, without adequate safety equipment, and without effective legal recourse when they are injured or killed. The estimated annual death toll among construction workers in India, largely from falls and other workplace accidents, runs into the thousands.

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act of 1996 established a welfare fund for construction workers, financed by a cess on construction projects, which should provide benefits including healthcare, pension, and death compensation. But the management of this fund by state-level construction worker welfare

boards has been riddled with corruption and inefficiency: the fund has accumulated tens of billions of rupees while very little has been distributed to workers.

13.2 Environmental Rights and Adivasi Dispossession

The intersection of environmental degradation, corporate resource extraction, and Adivasi rights represents one of the most serious systemic human rights violations in India. The mineral wealth of India's central tribal belt, the forested highlands of Chhattisgarh, Jharkhand, Odisha, and Madhya Pradesh, is extraordinary. This region contains massive deposits of iron ore, coal, bauxite, and other minerals that are central to India's industrial economy. It also contains the ancestral homelands of dozens of Adivasi communities, whose livelihoods depend on the forests and the land.

The conflict between corporate resource extraction and Adivasi land rights has been playing out since independence, but has intensified dramatically since economic liberalization. Mining projects, industrial development zones, hydroelectric dams, and other large infrastructure projects have displaced millions of Adivasi people from their ancestral lands. The Narmada dam projects alone displaced an estimated 320,000 people, predominantly Adivasi. The promised rehabilitation and resettlement has been consistently inadequate: compensation has been insufficient, alternative land has not been provided, and the cultural and ecological dimensions of displacement from ancestral territories have been completely unaddressed.

The Forest Rights Act was designed to address some of these issues by requiring the consent of gram sabhas (village assemblies) before any diversion of forest land for non-forest purposes. But in practice, gram sabha consent has been fraudulently obtained, ignored, or fabricated in numerous cases involving large-scale mining and development projects. The Niyamgiri case, in which the Supreme Court in 2013 held that gram sabhas in the Niyamgiri hills in Odisha must decide whether Vedanta's bauxite mining project would affect their rights, and in which all the relevant gram sabhas voted against the project, represents the best-case scenario: genuine community consent processes leading to genuine community decisions. But the Niyamgiri case is exceptional, not representative.

The environmental consequences of unregulated mining and industrial development, including the pollution of rivers, the destruction of forests, the contamination of groundwater, and the degradation of air quality, fall disproportionately on Adivasi and Dalit communities who live closest to industrial facilities and who lack the political power to protect themselves from environmental harms. Environmental justice is a component of human rights justice, and India's environmental record, particularly in relation to its most marginalized communities, represents a systematic violation of the right to a healthy environment that the Supreme Court has recognized as a component of Article 21's right to life.

CHAPTER FOURTEEN: WHY THE UNITED NATIONS MUST ACT AND HOW

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14.1 The Inadequacy of Existing Mechanisms

The foregoing analysis demonstrates that existing international human rights mechanisms have been inadequate to address the scale and persistence of human rights violations in India. The treaty monitoring bodies raise concerns; India deflects them. The Special Rapporteurs express alarm; India dismisses their reports. The Universal Periodic Review accepts recommendations; India fails to implement them. The Human Rights Council is structured in ways that protect powerful states from scrutiny. The International Criminal Court is inapplicable because India has not ratified the Rome Statute. The Security Council is paralyzed by geopolitical considerations.

This does not mean that international mechanisms are irrelevant: the documentation produced by treaty monitoring bodies, Special Rapporteurs, and NGOs is enormously important as a record of violations and as a resource for advocacy. But it does mean that the formal international accountability system, as currently structured, is insufficient to produce meaningful change in India's behavior.

The question of what stronger action the UN system could take is genuinely difficult. Any action that requires Security Council authorization will be subject to veto by India's strategic partners. Economic sanctions, which have been used in other human rights contexts, require a level of international consensus that India's strategic significance makes extremely difficult to achieve. The pressure that states individually and collectively can bring to bear through their bilateral relationships with India is significant but depends on the willingness of those states to prioritize human rights over strategic and economic interests, a willingness that has been consistently insufficient.

What the UN system can do, within its existing structures, is: establish a Special Rapporteur on the situation of human rights in India, something it has so far resisted doing; establish a commission of inquiry or fact-finding mission to investigate specific situations, particularly in Kashmir; push for India's ratification of the Rome Statute and the International Convention for the Protection of All Persons from Enforced Disappearance; and ensure that India's compliance with its treaty obligations is subject to more rigorous and specific review. These are incremental steps, but in the context of a multilateral system severely constrained by geopolitical considerations, incremental steps are the realistic form of progress.

14.2 The Role of Regional Organizations and Civil Society

The absence of a regional human rights system in Asia is a significant gap in the global human rights architecture. Europe has the European Court of Human Rights. The Americas have the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights. Africa has the African Court on Human and Peoples' Rights. Asia has no equivalent regional mechanism, partly because the extraordinary diversity of Asian states, and the dominance within the region of states that are resistant to external human rights scrutiny, has made it impossible to build consensus for a binding regional human rights treaty and court.

The Association of Southeast Asian Nations (ASEAN) has an Intergovernmental Commission on Human Rights, but its mandate is advisory and non-binding, and its work has been largely

ineffective. South Asian regional institutions, including the South Asian Association for Regional Cooperation (SAARC), have been even less willing to engage with human rights issues among member states.

In this context, the role of civil society, both Indian civil society and transnational civil society, in documenting violations, advocating for accountability, and maintaining the political salience of human rights issues is indispensable. Organizations like Human Rights Watch, Amnesty International, the International Federation for Human Rights (FIDH), and the World Organisation Against Torture have played crucial roles in documenting and publicizing India's violations and in representing victims' perspectives before UN bodies. Indian civil society organizations, including the People's Union for Civil Liberties (PUCL), the People's Union for Democratic Rights (PUDR), and numerous more specific advocacy organizations, have maintained a tradition of human rights documentation and litigation under conditions of increasing state pressure.

The FCRA restrictions documented earlier represent a direct attack on this civil society infrastructure. The government's strategy of defunding critical civil society through FCRA restrictions, of prosecuting activists through UAPA, and of creating an atmosphere of fear and self-censorship is a deliberate attack on the mechanisms through which accountability is maintained. Strengthening civil society's capacity to operate freely is therefore a condition of all other human rights progress.

CHAPTER FIFTEEN: CONCLUSION TO PART ONE AND THE ARCHITECTURE OF THE REMAINING FIFTEEN PARTS

This first part of the fifteen-part textbook has laid the theoretical, historical, constitutional, and empirical foundations for the analysis that follows. It has established the philosophical frameworks through which human rights violations must be analyzed, including natural law theory, legal positivism, critical legal theory, postcolonial jurisprudence, feminist theory, and structural violence analysis. It has examined the historical roots of India's human rights crisis in colonialism, partition, the formation of the security state, and the Nehruvian inheritance. It has analyzed the constitutional architecture of India, identifying both its genuine achievements and its structural failures. It has introduced the major categories of violation, including AFSPA and Kashmir, caste and Dalit rights, religious minority persecution, Adivasi rights, press freedom, prison conditions, and economic rights. And it has situated India's domestic violations within the context of its regional behavior and its relationship with the international human rights system.

The analysis that follows, across the remaining fourteen parts, will develop each of these themes in greater depth, will introduce additional themes including gender-based violence, the rights of LGBTQ+ communities, environmental justice, the rights of persons with disabilities, and rights in the digital age, and will analyze the political economy of human rights violation in India, examining how the interests of dominant social groups are maintained through legal and institutional structures.

Several theoretical themes will run through all fifteen parts. The first is the central importance of impunity: the absence of accountability for perpetrators of human rights violations is not a failure of the system but a feature of it, a deliberate choice that protects the powerful at the expense of the powerless. The second is the intersection of multiple forms of oppression: caste, class, religion, gender, and ethnicity are not separate dimensions of disadvantage but interlocking systems that reinforce and amplify each other. The third is the role of law as both a tool of liberation and a tool of oppression: constitutional rights can be genuine protections and also can be deployed as a cover for violation. The fourth is the indispensability of civil society: in the absence of effective state accountability mechanisms, civil society organizations are the primary mechanism through which violations are documented, victims are supported, and political pressure for change is maintained.

The fifth and perhaps most important theme is the question of political will. The human rights situation in India is not the product of incapacity, ignorance, or resource limitations. India has the institutional capacity, the legal frameworks, and the economic resources to address the violations documented in this textbook. What it lacks is the political will, and the political will is lacking because the violations serve the interests of the dominant social and political groups that control the state. Understanding this political economy of violation is essential to understanding what would need to change for the human rights situation to improve, and why that change is resisted so tenaciously by those with power.

EXTENDED JURISPRUDENTIAL AND PHILOSOPHICAL COMMENTARIES

Commentary A: On the Nature of Constitutional Promises in Postcolonial States

The political philosopher Onora O'Neill, in her analysis of obligation and rights in transnational contexts, argues that rights without obligations are empty. Every right, she insists, corresponds to a duty, and the identification of the duty-bearer is as important as the identification of the right-holder. In the Indian context, the constitutional guarantee of fundamental rights creates corresponding duties on the state. But the state in India is not a unified actor with a single set of interests and capacities. It is a diverse, contested, and internally contradictory ensemble of institutions, agencies, and actors, with divergent interests and differential accountability.

The fundamental rights under the Indian Constitution create enforceable duties primarily for state actors, as defined in Article 12 to include not only the central and state governments but also local authorities and "other authorities" within the territory of India or under the control of the Government of India. The Supreme Court has expanded this definition significantly, holding that private entities performing public functions may also be subject to fundamental rights obligations in some circumstances. But the basic gap between the constitutional promise and the institutional capacity to deliver on it remains vast.

O'Neill's analysis draws attention to what she calls "imperfect obligations": duties that are owed to everyone in general but to no one in particular, with no specified agent identified as the duty-bearer. The right to food, the right to healthcare, the right to education, even as interpreted by the

Supreme Court as components of Article 21, generate imperfect obligations in this sense: they are obligations of the state as a whole, not of any specific official or institution. This diffuse structure of obligation facilitates the diffusion of accountability: when no one in particular is responsible for a violation, everyone can avoid accountability.

Amartya Sen's capabilities approach, developed in collaboration with Martha Nussbaum and drawing on ideas from Aristotle, Adam Smith, and others, provides an alternative framework that is more sensitive to the specific circumstances of individuals. The capabilities approach holds that justice requires that all individuals have access to a minimum threshold of fundamental capabilities, including the capability to live a life of normal length, to have good health, to be safe from violence, to use one's senses and imagination, to form emotional attachments, to exercise practical reason, to engage in political participation, to live with concern for other species, and to control one's environment. The capabilities approach is not primarily about formal rights but about the substantive freedom to live a fully human life.

Applied to India, the capabilities approach reveals the depth of the failure. For hundreds of millions of Dalits, Adivasis, Muslims, and women, the fundamental capabilities identified by Sen and Nussbaum are systematically unavailable. The capability to live a life of normal length is curtailed by malnutrition, inadequate healthcare, pollution, occupational hazards, and violence. The capability to have good health is curtailed by the inadequacy of public health infrastructure and the cost of private care. The capability for safety is curtailed by caste violence, communal violence, and domestic violence. The capability for political participation is curtailed by voter suppression, by the exclusion of marginalized groups from political parties, and by the criminalization of advocacy. The capabilities approach makes visible what formal rights analysis can obscure: the lived reality of structural deprivation in a formally democratic state.

Commentary B: On Law as Violence: Cover and Uncovering

Robert Cover's 1986 article "Violence and the Word," published in the Yale Law Journal, is one of the most powerful pieces of legal scholarship of the twentieth century. Cover argues that legal interpretation is never merely a mental exercise: it is always accompanied by, or threatened by, physical violence. When a court imposes a sentence, that sentence is backed by the violence of imprisonment, which is itself backed by the violence of physical force used to detain the prisoner. The violence is real, and its reality shapes the meaning of legal texts.

Cover's analysis has a powerful application to India. The armed forces who kill civilians under the authority of AFSPA are not merely engaging in unauthorized violence: they are carrying out legal violence, violence authorized and protected by law. The police officers who torture suspects in custody are engaging in illegal violence, but they operate within an institutional culture that protects illegal violence from accountability, making it functionally legal. The municipal authorities who deploy bulldozers to demolish Muslim homes are engaging in legal violence, using the law of building violations as the authorization for what is, in substance, political violence.

Cover also writes about "nomos": the normative universe within which legal interpretation occurs, the community of shared meaning that gives legal texts their significance. The nomos of

Hindu nationalism, which treats India as a Hindu homeland in which non-Hindus are at best guests and at worst enemies, is incompatible with the secular nomos of the Indian Constitution, which treats all citizens as equal regardless of religion. The struggle over India's human rights situation is, at one level, a struggle between these incompatible normative universes, a struggle over which interpretation of India will prevail in practice, regardless of what the constitutional text says.

Cover's third important idea is "jurispathic" law: law that kills alternative legal narratives and alternative normative orders. The AFSPA, in Cover's terms, is jurispathic: it kills the legal narratives of Kashmiri communities by denying them the legal reality of accountability for violence against them. The UAPA is jurispathic: it kills the legal narratives of human rights defenders by criminalizing their documentation and advocacy. The CAA is jurispathic: it kills the legal narrative of Muslims as equal citizens by making their religious identity a ground for exclusion from a citizenship benefit.

Commentary C: On Hegemony and International Order

Antonio Gramsci's concept of hegemony, developed in the Prison Notebooks written during his imprisonment by Mussolini's government, is one of the most influential frameworks for analyzing the relationship between power, ideology, and the maintenance of social order. Gramsci distinguished between domination, which is maintained through force, and hegemony, which is maintained through the active consent of the dominated, generated through cultural institutions and practices that naturalize and legitimize the existing social order.

Applied to India's regional behavior, a Gramscian analysis suggests that India's power over its neighbors operates through both domination and hegemony. The economic dependency of Nepal, Bangladesh, Bhutan, and Sri Lanka on India creates structural conditions of domination: these countries cannot easily resist Indian pressure because their economies are deeply integrated with and dependent on India. But India also seeks hegemony in the South Asian region, presenting itself as a natural leader, a model of development, a protector of smaller states against external threats, and a civilizational center.

The concept of hydro-coercion, developed in the 2025 academic literature cited earlier, captures one specific mechanism through which India's regional domination is exercised. But Gramsci's analysis points to the broader ideological dimension: India's domination of regional institutions, including SAARC, its management of regional media narratives about India's role and character, and its projection of a particular image of itself as a beneficent partner rather than a self-interested hegemon, are all elements of a hegemonic strategy. The August 2024 Bangladesh flood incident, in which India was accused of releasing water from a dam without warning but denied responsibility, illustrates the tension between the hegemonic narrative (India as a responsible water partner) and the reality of Indian unilateral decision-making.

Robert Cox's development of Gramscian international relations theory, particularly in his concept of "historical structures" as configurations of material capabilities, ideas, and institutions, provides a useful framework for analyzing India's position in the regional order. India's historical structure of regional dominance rests on its material capabilities (economic and

military size), its ideological claims (as a democracy, as a civilizational center, as a responsible regional power), and its institutional control (of SAARC, of bilateral treaty frameworks, of regional infrastructure). Understanding this structure is essential to understanding why India's violations of its neighbors' rights are persistent and why they are so difficult to address through multilateral mechanisms.

Part Two: Institutional Collapse, Judicial Complicity, and the Architecture of Authoritarian Legality

A Systematic, Philosophical, and Legal Analysis of Courts, Criminal Law, Expression, Gender, Labor, Digital Surveillance, and India's Extraterritorial Reach

Part Two of Fifteen

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"When the judiciary becomes the handmaiden of the executive, when courts calibrate their courage to the temper of those in power, when the law is enforced only against the powerless and shelters only the powerful, then the constitution has already failed, regardless of what its text continues to promise."

Adapted from the legal philosophy of Justice H.R. Khanna, the sole dissenter in ADM Jabalpur v. Shivkant Shukla (1976)

PREFACE TO PART TWO

Part One of this textbook established the foundational theoretical and philosophical frameworks through which India's human rights crisis must be understood. It examined the philosophical traditions, from natural law through legal positivism to postcolonial jurisprudence and feminist theory, that illuminate the character and depth of violation. It traced the historical architecture of oppression from the colonial period through independence, through the Emergency, to the consolidation of Hindu nationalist power under the Modi government. It examined in depth the constitutional provisions that both promise rights and enable their denial. And it introduced the major categories of violation: Kashmir's endless emergency, the structural violence of caste, the targeting of religious minorities, the Adivasi dispossession, and India's exercise of regional hegemony over its smaller neighbors.

Part Two descends deeper into the institutional machinery of violation. Where Part One was primarily concerned with understanding the structure and ideological foundations of India's rights crisis, Part Two is concerned with how that crisis is produced, maintained, and legitimized

through specific institutions, laws, and practices. It examines how the judiciary, which is constitutionally the primary guardian of rights, has been systematically weakened, compromised, and in some periods captured by the executive branch. It examines the new criminal laws that replaced the colonial-era Indian Penal Code in 2023 and what they reveal about the direction of Indian governance. It dissects the assault on freedom of expression, press freedom, and academic liberty that has accelerated dramatically under the Hindu nationalist project. It confronts the epidemic of sexual violence and the systematic failure of state institutions to address it. It examines how the rights of workers and the rural poor have been sacrificed to a model of economic development that concentrates wealth and disperses suffering. It analyzes the emerging techno-authoritarian infrastructure of digital surveillance that is being constructed with alarming speed and insufficient legal oversight. And it examines India's use of extraterritorial intelligence operations, including alleged targeted assassinations on foreign soil, as an extension of its domestic suppression of dissent.

Part Two is written in the conviction that institutions matter, that the failure of institutions is not accidental, and that understanding how institutions fail requires both empirical investigation and philosophical depth. The collapse of judicial independence is not merely a political story: it is a story about authority, legitimacy, and the relationship between power and law. The crisis of press freedom is not merely a story about specific journalists being jailed: it is a story about the epistemological infrastructure of democratic accountability. The epidemic of sexual violence is not merely a social problem: it is a manifestation of the deepest structural violence in a society built on the intersection of caste, gender, and class domination.

Throughout this Part, as throughout the textbook as a whole, the standard is international human rights law and the broadest traditions of jurisprudential and political philosophy. India is evaluated not by a standard different from that applied to other states, but precisely by the standards it has formally adopted through its constitutional commitments and its treaty obligations, and by the standards that any serious engagement with the philosophical tradition of human rights demands.

CHAPTER ONE: THE SUPREME COURT OF INDIA: GUARDIAN, CAPTIVE, AND COLLABORATOR

1.1 The Constitutional Architecture of Judicial Power

The Supreme Court of India was designed by the framers of the Constitution to be the sentinel of the Constitution, the guardian of fundamental rights, and the final arbiter of constitutional meaning. The framers gave it sweeping powers: original jurisdiction in disputes between the Centre and States, appellate jurisdiction over all High Courts, advisory jurisdiction when the President seeks its opinion, and most importantly, the power of judicial review under Articles 13, 32, and 226, enabling it to strike down any law or executive action that violates the Constitution.

Article 32, which grants every person the right to approach the Supreme Court directly for the enforcement of fundamental rights through writs of habeas corpus, mandamus, prohibition, quo

warranto, and certiorari, was described by Ambedkar as the heart and soul of the Constitution. The significance of this provision cannot be overstated. It means that the enforcement of constitutional rights is not merely a matter of legislative goodwill or executive discretion but is judicially enforceable as a matter of right. This was a radical departure from the colonial legal order, in which the superior courts' power to protect subjects from the state was limited and structurally subordinate to executive power.

The constitutional guarantee of judicial independence rests on several structural pillars. Under Article 124, Supreme Court judges are appointed by the President after consultation with the Chief Justice of India and such other judges as the President deems necessary. Under Article 125, their salaries and service conditions are charged directly to the Consolidated Fund of India, making them independent of parliamentary appropriation. Under Article 124(4), judges can be removed only by an address of both Houses of Parliament supported by a majority of the total membership of each House and a majority of not less than two-thirds of the members of each House present and voting, followed by a Presidential order. This high threshold for removal was designed to make judges secure enough in their position to deliver unpopular judgments without fear of political retaliation.

In practice, the constitutional architecture of judicial independence has been progressively hollowed out through a combination of executive pressure, the manipulation of judicial appointments, the informal culture of the legal profession, and the institutional sociology of the court itself. Understanding how this happened requires engaging with both the doctrinal history of the court and the sociological analysis of judicial behavior under political pressure.

1.2 The Collegium System: An Undemocratic Solution to a Democratic Problem

The appointment of Supreme Court judges in India has been governed since 1993 by a system known as the Collegium, which is itself a remarkable example of judicial interpretation rewriting constitutional text to produce a result the text does not clearly support. In the Second Judges Case (Supreme Court Advocates-on-Record Association v. Union of India, 1993), a nine-judge bench overruled an earlier interpretation and held that the phrase "after consultation with" in Article 124 required that the President actually follow the Chief Justice's recommendation, rather than merely receive it. The Court effectively converted a consultative process into a process of judicial primacy. In the Third Judges Case (In re Special Reference No. 1 of 1998), the Court further refined the system, holding that the Chief Justice of India must consult the four most senior judges of the Supreme Court before making a recommendation, creating the Collegium as a formal body.

The jurisprudential basis for the Collegium system was the need to protect judicial independence from executive manipulation of appointments. The Court's concern was genuine: successive governments had manipulated the appointment process to install "committed" judges who would defer to executive preferences. The Emergency period, when Indira Gandhi elevated judges who had shown willingness to defer to executive authority over more senior colleagues who had not, was the most dramatic example. The Collegium system was designed as a structural remedy for this problem.

But the cure has proven almost as bad as the disease. The Collegium operates without any statutory foundation, without any written criteria for appointment or elevation, without any formal process for receiving or evaluating recommendations from the bar, and without any public accountability. The senior judges who constitute the Collegium make decisions about who will serve on India's highest court through informal deliberation that is entirely invisible to the public. The potential for personal loyalties, caste networks, ideological preferences, and informal pressures from the bar to influence Collegium decisions is significant and has been alleged repeatedly.

The Modi government attempted to replace the Collegium system through the National Judicial Appointments Commission Act of 2014, which would have established a statutory body including the Law Minister and two eminent persons nominated by a committee including the Prime Minister and the Leader of the Opposition to participate in judicial appointments. The Supreme Court struck down the NJAC Act in 2015 in Supreme Court Advocates-on-Record Association v. Union of India, holding that the inclusion of executive members in the appointments process violated judicial independence and the basic structure of the Constitution. The government's response was to effectively starve the Collegium system by refusing to act on Collegium recommendations in a timely manner, creating a large backlog of unfilled judicial vacancies that weakened the courts' capacity.

The ideological consequences of the appointments process, whatever system governs it, are visible in the character of the Supreme Court that has emerged under the Modi government. The bench has shown a consistent pattern of greater deference to the executive on matters of national security and political sensitivity, combined with continued activism on social and economic rights matters that are less politically threatening to the ruling party. This differential pattern, being bold on topics where the executive is comfortable with judicial intervention while being timid on topics where judicial intervention might constrain executive power, is precisely what the framers designed Article 124 to prevent.

1.3 The Article 370 Judgment: Constitutional Jurisprudence in the Service of Power

The Supreme Court's unanimous judgment in Dr. Shah Faesal v. Union of India, decided in December 2023, upholding the Modi government's revocation of Article 370 of the Constitution, is the most significant constitutional decision of the decade and one of the most widely criticized in the history of Indian constitutional law. Its analysis reveals with exceptional clarity the relationship between judicial doctrine and political accommodation in the contemporary Supreme Court.

The substantive background has been described in Part One. Article 370 had granted special autonomous status to Jammu and Kashmir since 1949 and could be modified or abrogated only with the concurrence of the state's Constituent Assembly. That Constituent Assembly ceased to exist in 1957. The Presidential Order of August 5, 2019, which effectively abrogated Article 370, cited the concurrence of the "Governor" of Jammu and Kashmir, who under President's Rule was acting on behalf of the President, making the concurrence circular: the President was effectively concurring with himself. At the same time, the Presidential Order amended Article 367, which contains interpretive provisions for the Constitution, to redefine "Constituent Assembly" as

"Legislative Assembly," thereby appearing to create the legal basis for the concurrence that the original provision required. The state's Legislative Assembly did not exist at the time, since it had been dissolved under President's Rule. A Legislative Assembly that does not exist cannot give concurrence. The entire sequence was, in the words of numerous constitutional scholars including Faizan Mustafa, Gautam Bhatia, and many others, a constitutional fraud.

The Supreme Court's response to this constitutional fraud was to uphold it on the basis of a series of reasoning moves that have been thoroughly dissected and found wanting by the academic community. The Court held that Article 370 was always intended to be a temporary provision, that the President's satisfaction under Article 356 (President's Rule) could be exercised to take irreversible action, and that the absence of a state legislature did not invalidate the concurrence requirement because the concurrence had been given by the Governor acting for the President. Each of these holdings has been subjected to devastating scholarly critique.

Gautam Bhatia, whose work "The Transformative Constitution" published in 2019 represents the most theoretically sophisticated account of Indian constitutional jurisprudence available, has argued that the Article 370 judgment represents the abandonment of the constitutional commitment to federalism that has been part of India's basic structure since Kesavananda Bharati. Bhatia's analysis draws on Jacobi's theory of "silent bargains" in constitutional design: Article 370 was a silent bargain between the Indian Union and the people of Jammu and Kashmir, a commitment that their special status would not be altered without their democratic consent. The abrogation of Article 370 without that consent is not merely a procedural irregularity but a fundamental breach of the constitutional compact.

From the perspective of international law, the judgment raises equally serious concerns. The ICJ's Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (2010) advisory opinion, while focused on the specific question of whether Kosovo's declaration of independence violated international law, contains significant analysis of the relationship between self-determination, territorial integrity, and democratic legitimacy. The specific promise of a plebiscite in Kashmir, reflected in UN Security Council resolutions that remain formally operative, creates a legal situation that the domestic Supreme Court judgment does not and cannot resolve. The downgrading of Kashmir's constitutional status without any democratic consultation of its people is incompatible with the principle of self-determination as understood in contemporary international law.

The reaction of the people of Kashmir to the judgment was telling. While the Supreme Court upheld the abrogation, it also directed that elections to the Jammu and Kashmir Legislative Assembly be held by September 30, 2024. Those elections were eventually held in September and October 2024, and the National Conference-Congress alliance won a majority, with the National Conference president Omar Abdullah becoming Chief Minister of a territory now stripped of the statehood it had previously held. The elections were conducted in a substantially altered political and demographic environment, with new electoral rolls, new boundary delimitations that critics argued favored Hindu-majority areas, and with the key political and civil society leaders who might have given fuller voice to Kashmiri grievances having spent years in detention or under severe restrictions.

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1.4 Habeas Corpus in Crisis: The Decline of the Writ

Habeas corpus, the writ that commands a detaining authority to produce a detained person before a court and justify the lawfulness of the detention, is among the oldest and most fundamental instruments of the rule of law. Its history stretches from Magna Carta through the English Habeas Corpus Act of 1679, through the American constitutional guarantee, to its enshrinement in the Indian Constitution under Article 32 and the ICCPR under Article 9. Blackstone called it the "bulwark of English liberty." Ambedkar treated it as central to the Constitution's rights architecture.

The effectiveness of habeas corpus in India has declined markedly over the past decade. The pattern is visible in multiple dimensions: the number of habeas corpus petitions disposed of by the Supreme Court has declined, the court's willingness to issue immediate orders for production has diminished, the standard of judicial scrutiny applied to detention orders has lowered, and the willingness of courts to grant bail in cases involving the UAPA and the PSA has fallen to near zero.

The data is sobering. In the post-August 2019 Kashmir context, hundreds of habeas corpus petitions were filed challenging the detention of politicians, civil society leaders, journalists, and ordinary citizens under the Public Safety Act. The Supreme Court's response was, by any standard, inadequate. The Court did not issue immediate orders for production in most cases. It allowed the executive to delay proceedings for months. In the cases of former Chief Ministers Omar Abdullah and Mehbooba Mufti, both detained under the PSA within hours of the Article 370 revocation, the Court took months to order their release, during which time they were held in conditions of strict isolation.

The philosophical stakes of the decline of habeas corpus are enormous. Ronald Dworkin, whose work "Taking Rights Seriously" published in 1977 remains a foundational text of rights jurisprudence, argued that rights are "trumps": they override calculations of aggregate social benefit. The right to liberty, protected by habeas corpus, is a paradigmatic Dworkinian trump. When a court refuses to exercise the habeas corpus jurisdiction with the urgency that the deprivation of liberty demands, it is not merely applying law differently. It is effectively abandoning the position that liberty has the status of a trump, treating it instead as a consideration to be balanced against administrative convenience, executive security concerns, and the institutional desire to avoid confrontation with a powerful government.

The Sri Lankan Supreme Court's habeas corpus jurisprudence, by contrast, provides an illuminating point of comparison. Despite operating in a more repressive political environment in some periods, the Sri Lankan Supreme Court has maintained a more robust habeas corpus practice in certain categories of cases, demonstrating that judicial activism in this domain is possible even when the political environment is unfavorable. The Indian Supreme Court's retreat from robust habeas corpus review is therefore a choice, not an inevitability.

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1.5 Public Interest Litigation: The Double-Edged Sword

Public Interest Litigation (PIL) was developed by the Indian Supreme Court in the late 1970s and early 1980s as a response to the recognition that the formal requirements of standing (the requirement that a petitioner show a direct legal interest in a case) operated as a barrier preventing the most disadvantaged people, who lacked the resources and legal sophistication to bring their own cases, from accessing constitutional remedies. Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, the two judicial architects of PIL, allowed any person acting in good faith and in the public interest to bring a case before the Court on behalf of those unable to litigate for themselves.

PIL produced extraordinary results in its first decades. The Vishaka judgment of 1997, which established guidelines for the prevention of sexual harassment at the workplace in the absence of legislation, was a PIL. The directions in PUCL v. Union of India requiring the government to divert surplus food grains from storage to hunger relief programs were issued in a PIL. The series of environmental cases brought by M.C. Mehta transformed Indian environmental law and addressed pollution levels in Indian cities and rivers that had been ignored by the legislature and the executive for decades.

But PIL has also developed pathologies that undermine its original purpose. The most significant is its capture by the litigious middle class and by politically motivated petitioners who use it not as a tool for the dispossessed but as a tool for ideological or personal agenda-setting. The "curative PIL," filed not to seek justice for the vulnerable but to advance the petitioner's preferred policy positions or to attack political opponents, has become a significant feature of the Supreme Court's docket. Under the Modi government, PILs seeking to challenge government policies that harm minorities, Dalits, and the poor have faced increasing resistance from benches inclined toward the executive, while PILs aligned with Hindu nationalist objectives have received more sympathetic reception.

The ideological capture of PIL is visible in the 2022 Hijab case (Resham v. State of Karnataka), in which a division bench of the Karnataka High Court upheld a government order banning the wearing of hijab in educational institutions, finding that wearing hijab was not an essential religious practice in Islam. The ruling drew on a jurisprudential approach called the "essential religious practice" test, developed by the Supreme Court to distinguish between religious practices that are central to a religion and therefore entitled to constitutional protection and those that are peripheral and therefore not. The application of this test to hijab was criticized by scholars of Islamic law, by feminist jurisprudents who noted that the court was effectively telling Muslim women what they may and may not wear rather than protecting their autonomy, and by religious freedom scholars who noted that the essential practice test improperly involves judges in adjudicating internal religious doctrine.

The appeal against the Karnataka High Court's hijab order reached the Supreme Court and in October 2022 was decided by a two-judge bench that could not agree, with one judge holding that the hijab is an essential religious practice and the other holding that it is not. A split bench cannot constitute a binding precedent. The matter was referred to a larger bench. As of early 2026, no larger bench has heard the matter. The Karnataka government's ban on hijab in

educational institutions therefore effectively continues without a final Supreme Court ruling. The delay is itself a form of decision: girls who have been prevented from wearing hijab in school for years are losing years of education and the opportunity to exercise their religious freedom in the interim.

1.6 The Sedition of Judicial Speech: Self-Censorship and the Loss of Judicial Independence

Among the most disturbing trends in the Indian judiciary's recent history is the phenomenon of judicial self-censorship: the reluctance of judges to deliver judgments that they know will displease the executive, enforced not by any explicit threat but by the internalization of anticipated consequences. This is a phenomenon known in the literature of judicial behavior as "preference falsification," a concept developed by the economist Timur Kuran in "Private Truths, Public Lies" published in 1995. Judges who privately hold that the law requires a particular outcome contrary to executive preference may publicly deliver a different outcome because the social, professional, and institutional costs of confrontation seem to outweigh the costs of accommodation.

The mechanisms through which judicial self-censorship operates in India are multiple. The appointment process concentrates significant informal power in the hands of the Law Minister and the Prime Minister's Office, regardless of the formal Collegium process. Judges who are seen as troublesome can find their Collegium recommendations inexplicably delayed or their post-retirement appointments to desirable tribunals and commissions unavailable. The social networks of the legal establishment in Delhi, where government officials, senior lawyers, and judges intermingle at events and institutions, create informal channels of pressure that never rise to the level of explicit threat but powerfully shape behavior.

The post-retirement appointment problem is particularly acute. Indian Supreme Court judges have relatively young retirement ages (sixty-five years) compared to many other judicial systems. A judge who retires at sixty-five has potentially fifteen to twenty years of active professional life ahead, during which appointment to a government tribunal, a regulatory commission, a public sector board, or an ambassadorial post can be enormously significant financially and professionally. The government controls these appointments. The pattern of correlation between favorable rulings in politically sensitive cases and subsequent post-retirement appointments has been noticed and documented by legal academics.

Justice Madan Lokur, a former Supreme Court judge who has been among the most forthright critics of judicial decline, delivered a series of lectures and interviews between 2020 and 2025 in which he documented the deterioration of judicial independence with remarkable specificity. He noted the increasing use of "master of the roster" power by Chief Justices, which effectively allows the Chief Justice to assign particularly sensitive cases to particular benches, creating the possibility of forum selection within the court itself to achieve particular outcomes. He noted the reluctance of judges to take up habeas corpus matters urgently. He noted the growing pattern of bail denials in political cases and the accelerating use of adjournment to delay politically inconvenient litigation.

The philosophical dimension of judicial self-censorship is analyzed with exceptional clarity by Owen Fiss in his essay "The Parity Problem" and by Alexander Bickel in "The Least Dangerous Branch." Both engage with the fundamental question of democratic legitimacy that judicial review raises: if unelected judges strike down the decisions of elected legislatures and executives, they are exercising counter-majoritarian power that requires justification. Bickel's answer was the concept of "principled adjudication": the legitimacy of judicial review depends on courts deciding cases on the basis of principles that transcend the immediate political controversy, principles that can be applied consistently across different contexts and different political constellations. When courts abandon principled adjudication in favor of outcome-oriented reasoning that conveniently supports whatever the government wants, they forfeit the legitimacy that principled adjudication provides. The Indian Supreme Court's recent record in politically sensitive constitutional cases exhibits the characteristics of outcome-oriented rather than principled adjudication with disturbing frequency.

1.7 The National Human Rights Commission: A Compromised Watchdog

The National Human Rights Commission of India, established by the Protection of Human Rights Act of 1993, was designed to be an independent body for the investigation of human rights violations and the promotion of human rights culture. By the standards of similar bodies in other countries, it has from its inception suffered from significant structural limitations: it cannot investigate complaints against the armed forces (which must be referred to the relevant government ministry), its recommendations are not legally binding, and its composition, which requires that it be headed by a former Chief Justice of India with other members being former senior judges, has been criticized as overly judicially dominated with insufficient representation of civil society or human rights practice.

Despite these limitations, the NHRC has in periods of stronger leadership made significant contributions to human rights accountability in India, documenting custodial deaths, taking up cases of Dalit violence, and issuing recommendations that have, in some instances, been acted upon by governments. Under the current political environment, however, the NHRC's effectiveness has declined markedly. Its independence has been questioned by the Global Alliance of National Human Rights Institutions (GANHRI), the international body that accredits national human rights institutions.

During the 45th session of GANHRI held in March 2025, the body recommended downgrading India's National Human Rights Commission from "A" to "B" status, citing concerns including the involvement of police officers in investigations that may impact its impartiality. OMCT This recommendation is of enormous symbolic and practical significance. "A" status national human rights institutions are entitled to participate in UN Human Rights Council proceedings, make statements before UN bodies, and are considered credible partners for the international human rights system. "B" status institutions have these privileges withdrawn. The downgrading of the NHRC would be a powerful signal of international concern about the independence and effectiveness of India's primary human rights monitoring body.

On 3 March 2025, the UN High Commissioner for Human Rights highlighted concerns about the violence and displacement in the state of Manipur and the shrinking civic space in Jammu and

Kashmir, concerns that were dismissed by the Indian government. Amnesty International The government's reflexive dismissal of international concern, consistent across successive administrations but intensified under the Modi government, is analyzed in depth in Chapter Nine. In this context, the potential downgrading of the NHRC is significant because it will deprive India of the argument that its domestic human rights institutions provide adequate remedies for violations, an argument that has been repeatedly used to resist international accountability mechanisms.

India saw a sharp deterioration in ties with the United States in 2025 after the Trump administration announced record high trade tariffs, while the United States and others did not call on the Modi administration to stem its deteriorating human rights record. Human Rights Watch This observation, from the Human Rights Watch World Report 2026, illustrates the pervasive problem in international human rights accountability: geopolitical and economic interests consistently override human rights concerns in the actual conduct of states' foreign policies, regardless of their rhetorical commitments.

1.8 International Judicial Comparisons: What India's Courts Could Be

The crisis of Indian judicial independence is thrown into sharper relief when compared with the performance of apex courts in other constitutional democracies facing comparable political pressures. The comparison is not merely a rhetorical device: it demonstrates that the choices the Indian Supreme Court has made are choices, not the product of structural inevitability.

The German Federal Constitutional Court provides the most instructive comparison. Germany's experience of judicial complicity with the Nazi regime created an extraordinarily strong institutional commitment to the independence and principled role of constitutional adjudication. The Basic Law of 1949 established the Federal Constitutional Court with structural protections for independence that exceed even the Indian Constitution's provisions: judges are appointed for non-renewable twelve-year terms by a complex process involving both houses of parliament, and the Court's jurisdiction is triggered by multiple routes including individual constitutional complaints. The result has been a court that has consistently applied its own doctrine rigorously, even when this has required striking down legislation supported by powerful political majorities.

The South African Constitutional Court, created by the interim and final constitutions of 1993 and 1996, provides a model of transformative constitutionalism that has direct relevance to India's situation. The South African Constitution explicitly incorporates the obligation of the state to progressively realize socioeconomic rights, including rights to housing, health care, food, water, and social security. The Court has in a series of landmark judgments, including Government of the Republic of South Africa v. Grootboom and Minister of Health v. Treatment Action Campaign, developed a jurisprudence of minimum core obligations and reasonable state response that has genuine bite on executive policy even while respecting democratic space. This model of engaged, principled review offers a path between the abdication of the current Indian Supreme Court in politically sensitive cases and the judicial overreach that too-robust review can produce.

The Inter-American Court of Human Rights, which has jurisdiction over human rights violations in the Americas, has developed a particularly robust jurisprudence on enforced disappearances, the rights of indigenous peoples, and the obligations of states to conduct effective investigations. Its decisions in cases involving countries with historically weak judicial institutions have provided external accountability that domestic courts could not. India's refusal to accept the jurisdiction of comparable international bodies, discussed in Chapter Nine, deprives Kashmiri victims, Dalit communities, and religious minorities of this additional layer of accountability.

CHAPTER TWO: THE NEW CRIMINAL LAWS AND THE ARCHITECTURE OF AUTHORITARIAN LEGALITY

2.1 The Three Laws: Decolonization as Disguise

In August 2023, the Government of India introduced three Bills in Parliament: the Bharatiya Nyaya Sanhita (BNS), replacing the Indian Penal Code of 1860; the Bharatiya Nagarik Suraksha Sanhita (BNSS), replacing the Code of Criminal Procedure of 1973; and the Bharatiya Sakshya Adhiniyam (BSA), replacing the Indian Evidence Act of 1872. The Bills were passed with minimal parliamentary debate, with the Opposition largely absent following their mass suspension for disrupting proceedings. The three laws came into force on July 1, 2024.

The government's stated justification for the overhaul was decolonization: the replacement of colonial-era criminal laws with laws rooted in Indian values and serving Indian citizens rather than colonial masters. Home Minister Amit Shah presented the reforms with rhetorical flourish, describing them as a transformation from a "system of punishment" to a "system of justice." The language of decolonization has powerful resonances in a country with India's history, and the argument that a constitutional democracy should not be governed by laws written by colonial administrators for the purpose of maintaining imperial control is, in principle, a legitimate one.

But substantive examination of the three new laws reveals that the rhetoric of decolonization conceals a reality of authoritarian entrenchment. The most repressive features of the colonial criminal law were not eliminated but preserved, in several cases expanded. New provisions were introduced that restrict civil liberties in ways for which no colonial precedent existed. And the procedural safeguards against abuse of criminal process, which the colonial laws had accumulated through decades of common law development, were in some cases weakened or eliminated.

The most significant substantive change in the BNS is the treatment of what was formerly Section 124A, the sedition provision. As described in Part One, Section 124A was challenged before the Supreme Court, which stayed its operation in May 2022 pending review. The BNS does not include a provision explicitly labeled "sedition." But it includes Section 152, which criminalizes acts that "endanger the sovereignty or unity and integrity of India" or that "excite or attempt to excite secession, armed rebellion or subversive activities, or encourages feelings of separatist activities." This provision is arguably broader in scope than the sedition provision it replaces, because it adds the concept of "subversive activities" without defining it, and it lacks

the limiting interpretation that the Supreme Court had attached to Section 124A in the Kedar Nath judgment. The practical effect is the continuation of a sedition-like offense under a different label, without even the modest judicial constraints that the old provision had accumulated.

2.2 The BNSS and Expanded Police Powers

The Bharatiya Nagarik Suraksha Sanhita contains several provisions that significantly expand police powers in ways that raise serious human rights concerns. Section 187 of the BNSS extends the maximum period of police custody that a magistrate can authorize from fifteen days (under the old CrPC) to a total of sixty days, with the possibility of further extensions in cases investigated by specified agencies. This provision dramatically extends the period during which a suspect can be held in police custody before being remanded to judicial custody, which is the more protective regime. It is during police custody that the risk of torture and coerced confessions is highest. Extending the maximum police custody period from fifteen days to sixty days multiplies the torture risk by a factor of four.

Section 43(5) of the BNSS introduces a provision allowing police to "handcuff" a person who has been arrested in certain categories of cases, including cases involving "organized crime" and "offences against the State." Handcuffing of arrested persons was prohibited by the Supreme Court in Prem Shankar Shukla v. Delhi Administration (1980) except in exceptional circumstances, on the basis that handcuffing is inherently humiliating and violates human dignity. The legislative overriding of this judicial prohibition through the BNSS provision represents the executive's response to a judicial constraint on executive power: rather than comply, it legislates around the constraint.

The BSA (Indian Evidence Act replacement) raises concerns about electronic evidence in ways that are particularly relevant to the digital surveillance context analyzed in Chapter Seven. The BSA admits electronic records as evidence without requiring certificate authentication in certain categories of cases, which could facilitate the admission of digitally fabricated evidence of the kind exposed in the Bhima Koregaon case. The forensic evidence introduced by Arsenal Consulting in that case demonstrated conclusively that documents had been planted on defendants' computers through malware. The loosening of authentication requirements for electronic evidence could make it easier to introduce fabricated digital evidence without adequate judicial scrutiny.

2.3 Organized Crime Provisions and the Expansion of Prosecutorial Discretion

The BNS introduces a new chapter on "Organized Crime" (Chapter VII) that creates broad new offenses susceptible to wide application. Section 111 of the BNS defines an "organized crime syndicate" as a group of three or more persons who acting in concert engage in a continuing unlawful activity and the offense of "organized crime" includes any continuing unlawful activity including violent crime, human trafficking, drug trafficking, and extortion. But it also includes "obtaining undue economic or other advantage" through criminal activity, language that could potentially be applied to any coordinated protest or civil disobedience campaign that involves any ancillary unlawful activity.

The comparison with the RICO statute in the United States is instructive and sobering. The Racketeer Influenced and Corrupt Organizations Act (RICO), enacted in 1970, created similarly broad liability for participation in organized criminal activity. Its subsequent use by federal prosecutors went far beyond its original legislative purpose, being applied to situations that involved no organized crime in any meaningful sense. The Supreme Court's interpretation of RICO in cases like Sedima, S.P.R.L. v. Imrex Co. (1985) attempted to impose some limiting construction, but RICO's breadth has remained a persistent concern of civil liberties scholars. The BNS's organized crime provisions, in an Indian context where prosecutorial discretion is subject to far less robust judicial oversight than in the United States, carry an even higher risk of politically motivated application.

The National Investigation Agency (NIA), which is the federal agency with primary jurisdiction over terrorism and organized crime offenses, is itself a deeply problematic institution. The NIA was established by the National Investigation Agency Act of 2008 following the Mumbai attacks. It has been used under the Modi government primarily to investigate cases involving Muslims, Kashmiri activists, Dalit and Adivasi rights defenders, and Communist organizers. The misuse of laws such as the Unlawful Activities Prevention Act, Prevention of Money Laundering Act, and various preventive detention laws by agencies like the NIA and Central Bureau of Investigation has severely curtailed civic freedoms. OMCT

The Prevention of Money Laundering Act (PMLA), which was designed to address the proceeds of specified predicate offenses, has been expanded through successive amendments until it now applies to a vast range of activities and confers extraordinary powers of arrest, search, and attachment of property on the Enforcement Directorate (ED) with minimal judicial oversight. The Supreme Court, in Vijay Madanlal Choudhary v. Union of India (2022), upheld the PMLA's provisions including the reverse burden of proof that requires the accused to prove their innocence rather than the state to prove guilt, departing from the fundamental presumption of innocence that underlies both the Indian Constitution and the ICCPR. The judgment has been widely criticized by criminal law scholars as inconsistent with constitutional guarantees of personal liberty.

2.4 Terrorism, the UAPA, and the Global Context

India's anti-terrorism law framework, centered on the UAPA, must be understood in the global context of the post-September 11 expansion of counter-terrorism legal powers in liberal democracies worldwide. The UN Security Council Resolution 1373 of September 28, 2001, adopted under Chapter VII of the UN Charter in the immediate aftermath of the September 11 attacks, placed binding obligations on all UN member states to criminalize terrorism, deny safe haven to terrorists, prevent terrorist financing, and cooperate in law enforcement. This resolution created enormous pressure on states worldwide to adopt or expand counter-terrorism legislation, often at the expense of civil liberties.

The UN's own response to this tension, through the work of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, has been to insist that counter-terrorism measures must be compatible with international human rights law, that they must be necessary and proportionate to the threat, that they must include

robust safeguards against abuse, and that they must be subject to effective independent oversight. The first Special Rapporteur, Martin Scheinin, and subsequent mandate-holders including Fionnuala Ni Aolain, have been consistent and specific in identifying the failure of India's counter-terrorism framework to meet these standards.

India's response to these concerns has been consistently to assert sovereignty and deny the Special Rapporteur's jurisdiction over its internal affairs, a response that itself violates India's obligations of cooperation with UN human rights mechanisms. As of October 2025, at least 19 visit requests from UN Special Rapporteurs remain pending, including one from the Special Rapporteur on torture, first requested in 1999 and reiterated multiple times, most recently in 2021. Redress The refusal to allow the Special Rapporteur on torture to visit India for over a quarter century, despite India's formal standing invitation to Special Procedures, is one of the most stark illustrations of India's actual approach to international human rights accountability.

The comparative analysis of counter-terrorism law reveals that India's UAPA is among the most rights-restrictive of any democratic state's counter-terrorism legislation. The European Convention on Human Rights, under Article 15, allows derogation from certain rights during a public emergency threatening the life of the nation, but only to the extent strictly required by the exigencies of the situation. The European Court of Human Rights has developed a substantial jurisprudence on the conditions that must be met for derogations to be permissible, including genuine public emergency, proportionality of the measures taken, and maintenance of judicial oversight. No comparable framework of scrutiny applies to India's use of the UAPA, because India has neither derogated from the ICCPR nor subjected its counter-terrorism measures to meaningful judicial review.

2.5 The Criminal Law and the Rohingya: Statelessness Industrialized

The Immigration and Foreigners Act of 2025 and the accompanying Immigration and Foreigners Order of September 2025 represent the most recent legislative development in India's approach to migration, refugees, and stateless persons. India is not a party to the 1951 Refugee Convention or its 1967 Protocol, which means it has no binding legal obligation to recognize refugee status, provide non-refoulement protection, or allow asylum seekers to remain in the country pending determination of their claims. The absence of a domestic refugee law has created a legal vacuum in which the status and rights of refugees, asylum seekers, and stateless persons in India are determined entirely by executive discretion and the provisions of the Foreigners Act, now replaced by the 2025 legislation.

Amnesty International has documented how, in Assam, foreigners tribunals have declared Indian citizens as "foreigners" despite valid documentation, rendering individuals stateless and subject to indefinite detention. The new Immigration and Foreigners Order 2025 replicates this flawed system on a national scale, shifting the burden of proof onto individuals and removing meaningful avenues for appeal. Amnesty International

Authorities illegally expelled hundreds of Bengali-speaking Muslims and Rohingya refugees to Bangladesh in 2025, some of whom were Indian citizens, claiming they were "illegal immigrants." Human Rights Watch The deportation of persons who may be Indian citizens to a

neighboring country on the basis of an administrative determination that lacks basic procedural safeguards is a gross violation of the right to nationality, protected by Article 15 of the Universal Declaration of Human Rights, and of the prohibition on arbitrary expulsion of nationals, which constitutes a form of statelessness.

The Rohingya, a Muslim minority community from Myanmar that has faced genocidal persecution at the hands of the Myanmar military, are among the most vulnerable population groups in India. Approximately forty thousand Rohingya have sought refuge in India, primarily in states including Jammu, Delhi, and Hyderabad. The Indian government's official position is that Rohingya are illegal immigrants subject to deportation. But the principle of non-refoulement, which prohibits the return of any person to a country where they would face a risk of persecution, torture, or cruel treatment, is now considered part of customary international law binding on all states, regardless of whether they have ratified the Refugee Convention. The deportation of Rohingya to Myanmar, where they face documented genocide, would violate this customary international law norm.

One group of Rohingya were forced to swim ashore, reaching Launglon township in Myanmar's Tanintharyi Region. The UN special rapporteur on human rights in Myanmar said the incident demonstrated a "blatant disregard for the lives and safety of those who require international protection." Human Rights Watch

The jurisprudential analysis of this situation leads to clear conclusions. Even without Refugee Convention membership, India is bound by the principle of non-refoulement as a norm of customary international law. The deportation of Rohingya to Myanmar violates this norm. The use of foreigners tribunals that place the burden of proof on the individual to establish citizenship, without adequate legal representation and with documented unreliability, violates the right to a fair hearing under Article 14 of the ICCPR. The indefinite detention of stateless persons in detention centers, without any prospect of either recognition of status or lawful deportation to a state willing to receive them, violates Article 9's prohibition on arbitrary detention.

CHAPTER THREE: THE WAR ON EXPRESSION: PRESS FREEDOM, ACADEMIC LIBERTY, AND THE SILENCING OF DISSENT

3.1 The Epistemic Foundation of Democracy: Why Press Freedom Is Not Merely a Liberal Value

Freedom of expression, freedom of the press, and freedom of academic inquiry are not merely individual freedoms that liberal political philosophy happens to protect. They are the epistemic infrastructure of democratic self-governance. A democracy that cannot produce accurate information about the performance of its government, that cannot subject official claims to scrutiny and challenge, and that cannot access the full range of analysis and argument about political questions, is incapable of making genuinely informed collective decisions. The

suppression of press freedom and academic liberty is therefore not merely a violation of individual rights: it is an attack on the democratic capacity of a society as a whole.

This understanding, which has deep roots in Mill's arguments in "On Liberty" about the marketplace of ideas and in Habermas's theory of communicative action and the public sphere, is especially critical in India's current context. The Hindu nationalist project, as analyzed in Part One, depends for its political success on a particular narrative of Indian history, Indian identity, and the Indian nation that is contestable, contested, and in fundamental respects empirically false. The narrative that India is essentially a Hindu nation in which Muslims are guests who must accept a subordinate position cannot withstand sustained exposure to the actual history of the subcontinent, to the actual text of the Constitution, or to the actual experience of India's Muslim, Christian, Dalit, and Adivasi communities. The suppression of press freedom and academic liberty is therefore not incidental to the Hindu nationalist project: it is essential to it. A free press and free universities would produce information and analysis that undermine the project's foundations.

The Global Press Freedom Index published annually by Reporters Without Borders (RSF) is among the most carefully constructed assessments of press freedom globally. India's ranking in this index has collapsed under the Modi government. From a rank of 140th in 2014 when the Modi government came to power, India fell to 159th out of 180 countries in 2023 and 2024. The RSF describes India as "one of the world's most dangerous countries for journalists." This assessment is based on documented incidents of journalist imprisonment, violence against journalists, the use of legal mechanisms to harass and intimidate the press, and the overall environment of fear and self-censorship that has developed in the Indian media landscape.

3.2 The Structural Capture of Indian Media

The crisis of press freedom in India is not primarily a story of journalists being jailed, though that story is real and serious. It is primarily a story of structural capture: the systematic acquisition of major Indian media outlets by corporate entities with close ties to the BJP government, and the consequent transformation of what was once a reasonably diverse media landscape into one dominated by outlets that function as instruments of BJP propaganda.

The dominance of one corporation in particular, Mukesh Ambani's Reliance Industries, over major sections of the Indian television media is well documented. Reliance owns Network18, which itself owns CNN-News18, CNBC TV18, News18 India, and several regional television channels. The Indian Express, The Economic Times, and other major print publications operate in an environment in which advertising revenue, which flows substantially from government and government-adjacent sources, creates powerful economic incentives for editorial self-restraint. The intimidation of editors and proprietors through the use of tax investigations, FCRA scrutiny, and other regulatory mechanisms is documented in multiple investigative reports.

The phenomenon was analyzed in a remarkable 2023 study by scholars at the Reuters Institute for the Study of Journalism at the University of Oxford, which found that Indian audiences' trust in news had declined sharply over the previous decade and that the divide between news outlets perceived as pro-government and those perceived as critical of the government had become one

of the defining features of the Indian media environment. The study noted that the government's relationship with friendly media went beyond mere preference: it included the allocation of government advertising, the granting of media credentials for official events, and the differential application of regulatory scrutiny.

Against this background, the handful of genuinely independent Indian media outlets, including The Wire, Scroll.in, The Quint, The Caravan, and NewsClick, have operated under conditions of continuous legal harassment. The Wire, which was founded in 2015 and has pursued investigative journalism that has embarrassed the government on multiple occasions, including breaking the Pegasus Project story on the use of Israeli spyware against Indian journalists and politicians, has faced multiple FIRs, defamation cases, and legal notices from individuals connected to the BJP. In October 2023, the NIA raided the offices of NewsClick, a digital news portal, and arrested its founder Prabir Purkayastha and HR head Amit Chakraborty under the UAPA, alleging Chinese funding of anti-India content. The Supreme Court later ordered Purkayastha's release on the basis that his arrest was illegal, but the damage to the organization was already substantial.

3.3 The Journalist as Criminal: Documentation of Specific Cases

The criminalization of journalism in India is documented in hundreds of specific cases. A comprehensive analysis requires engagement with individual cases that illustrate the patterns and techniques involved.

Siddique Kappan, a journalist from Kerala, was arrested in October 2020 while traveling to Hathras in Uttar Pradesh to report on the gang rape case discussed in Part One. He was arrested at a police checkpoint along with three others and charged under multiple provisions including the UAPA. He was accused of attempting to incite caste-based violence through his reporting. He remained in prison for two years before the Supreme Court finally granted him bail in September 2022, noting that the UAPA charges appeared to have been added to ensure he could not get bail under ordinary provisions. His case illustrates the use of anti-terrorism law against journalism with extraordinary clarity: a journalist traveling to report on a caste-violence case was imprisoned for two years without trial on terrorism charges.

Fahad Shah, the editor of The Kashmir Walla, was arrested in February 2022 and remained in custody for over two years under multiple cases including the UAPA. His publication had been one of the most important sources of independent journalism from within Kashmir, covering the experiences of ordinary Kashmiris with a depth and directness that the mainstream Indian press could not match. The charges against him included "waging war against the state" and "anti-national activities," based on his publication of coverage that differed from the official government narrative about Kashmir.

Authorities curtailed peaceful assembly through administrative detentions, denying permission for protests and violently dispersing gatherings calling for justice and accountability. Authorities continued to target artists, academics and journalists through expanded censorship, weaponization of criminal laws and digital restrictions. On 24 March, Maharashtra state police

filed an FIR against comedian Kunal Kamra for a parody in his stand-up show "Naya Bharat" (New India) that referred to political matters. Amnesty International

On 18 May 2025, Haryana state police registered two FIRs against Ashoka University professor Ali Khan Mahmudabad for social media posts about Operation Sindoor, resulting in his arrest. He was accused of violations of the penal code pertaining to maintaining communal harmony, incitement, and insulting religious beliefs. He was later released on bail. Amnesty International

The arrest of Ali Khan Mahmudabad, a professor of Political Science at Ashoka University (one of India's most respected private universities), for social media commentary about a military operation, deserves particular attention because it illustrates the extension of suppression into the academic space. The operation in question was India's military strikes on Pakistan and Pakistan-administered Kashmir in May 2025, following the Pahalgam terrorist attack of April 2025. Commentary on military operations, including critical commentary, is protected by the freedom of expression under any serious account of Article 19(1)(a) of the Indian Constitution and Article 19 of the ICCPR. The prosecution of a university professor for political commentary on a matter of public concern is incompatible with the constitutional guarantee of free expression and with the academic freedom that universities require to function.

3.4 The Internet Shutdown as Epistemic Violence

India's world-leading record in internet shutdowns has been analyzed in Part One in relation to Kashmir. But the phenomenon extends far beyond Kashmir and deserves analysis as a distinct form of epistemic violence against the populations affected.

Access Now, a global digital rights group that calls internet shutdowns "dangerous acts of digital authoritarianism," named India the "world's largest offender" for the fifth consecutive year for blacking out the internet at least 84 times in 2022. The group reports India accounted for more than half of all documented shutdowns globally since 2016. Congress.gov

The philosophical analysis of internet shutdowns as epistemic violence draws on multiple traditions. From the perspective of Habermas's theory of communicative action, shutdowns destroy the communicative infrastructure through which public opinion is formed and democratic deliberation occurs. A community that cannot communicate cannot deliberate, cannot coordinate, and cannot effectively participate in the democratic process. From the perspective of Amartya Sen's capabilities approach, internet shutdowns deprive individuals of the capability to seek and receive information, to communicate with others, to participate in civic life, and to exercise the agency that is the foundation of human dignity.

From the more narrowly legal perspective, internet shutdowns violate multiple provisions of international human rights law. Article 19 of the ICCPR protects the right to seek, receive, and impart information through any media and regardless of frontiers. The UN Human Rights Committee, in its General Comment 34 on Article 19, explicitly stated that states must not prevent internet access. The Human Rights Council resolution 20/8 of 2012 affirmed that the rights that people have offline also apply online. India's systematic use of internet shutdowns is

therefore not only a domestic constitutional violation but a violation of its binding obligations under the ICCPR.

Indian authorities continued to impose the largest number of internet shutdowns globally, violating Indian law and international human rights standards. The shutdowns disproportionately hurt socially and economically marginalized communities by denying them access to free or subsidized food rations and livelihoods. Human Rights Watch This observation from Human Rights Watch is particularly significant because it illustrates the intersection of epistemic and economic rights violations: internet shutdowns prevent not only the exercise of free expression but the exercise of the right to food, as people in many parts of India now access their food ration entitlements through digital systems that internet shutdowns render inaccessible.

3.5 The IT Act and the New Fact-Checking Regime

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021, commonly called the IT Rules 2021, introduced a comprehensive regulatory framework for digital media that has been widely criticized as a mechanism for government control of online content. The Rules require social media intermediaries to comply with government takedown orders within thirty-six hours, to respond to government information requests, to identify "first originators" of viral messages, and to set up grievance redressal mechanisms. The identification of first originators, in the context of encrypted messaging platforms like WhatsApp, would require breaking encryption, which both undermines the security of encrypted communications and threatens the anonymity that is essential to safe whistleblowing and activism.

The 2023 amendment to the IT Rules, which empowered the government to establish a "fact-checking unit" with the power to identify and order the takedown of any online information about the government that the unit deemed "false or misleading," represented an extraordinary assertion of government power over political speech. In September 2024, in a win for free speech, the Bombay High Court struck down the 2023 amendment to the Information Technology Rules that empowered the government to establish a fact-checking unit to identify and order the takedown of any online information about itself that it deemed to be false or misleading. Human Rights Watch

The Bombay High Court's striking down of the fact-checking unit amendment was a significant judicial victory for press freedom. But the legal challenge took over a year to resolve, during which time the government implemented the regime and used it to target critical online content. And the broader regulatory environment created by the IT Rules 2021 remains intact, creating multiple vectors through which the government can pressure digital platforms to suppress critical speech without the explicit mechanism of the fact-checking unit that the court struck down.

3.6 Academic Freedom and the University as a Site of Contestation

The Indian university system, and particularly the elite central universities, has been a site of sustained ideological contestation under the Modi government. The Hindu nationalist project is acutely aware of the role that universities play in shaping the intellectual culture and the

professional elite of a society. The systematic effort to transform the ideological character of India's universities, by changing the composition of regulatory bodies, by installing ideologically aligned administrators, by altering curricula to incorporate Hindu nationalist interpretations of Indian history and culture, and by using the criminal law to target students and faculty who resist, represents a comprehensive attack on academic freedom.

The transformation of the Indian Council of Historical Research (ICHR), the Indian Council of Social Science Research (ICSSR), and the Indian Council of Philosophical Research (ICPR), which are the primary government bodies funding academic research in humanities and social sciences, has resulted in the progressive marginalization of scholars whose work contradicts Hindu nationalist historical narratives and the promotion of scholars whose work supports them. This is not a direct form of repression. It is a structural form of epistemic control: by controlling who gets funded, who gets published by government presses, and who gets invited to government-convened conferences, the Hindu nationalist project shapes the intellectual landscape.

The suicide in January 2016 of Rohith Vemula, a Dalit Ph.D. student at Hyderabad Central University, became one of the most powerful mobilizing events of the anti-Hindu nationalist movement precisely because it illustrated the intersection of academic discrimination, caste oppression, and institutional failure with devastating clarity. Vemula and four other Dalit students had been barred from the university hostel and suspended from various academic activities following a complaint by an ABVP (the BJP-affiliated student organization) member. His final letter, written before he took his own life, has been described as one of the most powerful documents in the history of Dalit literature. It speaks of the systematic dehumanization of Dalit intellect: the reduction of a person's life to an immediate identity, a vote, a number, a thing.

The criminal law's role in attacking student activism is documented in the cases of Umar Khalid, a doctoral student from Jawaharlal Nehru University who was arrested under the UAPA in September 2020 in connection with the Delhi riots of February 2020 and who remained in prison without trial for over four years. India: Free Umar Khalid was the campaign of Amnesty International through September 2024, calling to stop invoking counter-terrorism law to silence dissent. Amnesty International Khalid's case exemplifies the use of UAPA's bail provisions as a mechanism of extended punishment without trial: the extraordinary bail standard means that a person can be imprisoned for years on charges that are ultimately dismissed, with the imprisonment itself serving as the punishment.

CHAPTER FOUR: GENDER, SEXUAL VIOLENCE, AND THE FAILURE OF THE JUSTICE SYSTEM

4.1 The Feminist Jurisprudence of Violence: Structural Analysis

The relationship between gender, power, and violence has been one of the central concerns of feminist jurisprudence since at least the 1970s. Catharine MacKinnon's radical feminist analysis,

developed in works like "Sexual Harassment of Working Women" (1979) and "Toward a Feminist Theory of the State" (1989), argued that sexual violence is not merely a crime committed by individual men against individual women but an instrument of gender domination: a mechanism through which patriarchal power is asserted, maintained, and enforced. On MacKinnon's analysis, the failure of legal systems to adequately address sexual violence is not accidental: it reflects the fact that legal systems have historically been constructed by men for the maintenance of male power, and they therefore treat sexual violence as something other than what it is.

In the Indian context, the feminist analysis is further complicated by the intersection of gender with caste and religion. Sexual violence in India does not operate merely along gender lines: it is deeply structured by caste, with upper-caste men assaulting Dalit women in patterns that have been analyzed as instruments of caste domination rather than merely gender violence. It is structured by religion, with communal violence frequently involving the sexual assault of women from the targeted community as a mechanism of collective humiliation and dominance assertion. It is structured by class, with poor women having virtually no effective access to the justice system that nominally protects their rights.

The philosophical tradition of vulnerability theory, developed by Martha Fineman as discussed in Part One, is particularly useful for understanding sexual violence in the Indian context. Fineman argues that all persons are vulnerable but that the state's role is to build resilience, the capacity to respond to and recover from harm. The Indian state has systematically failed to build the resilience of women, and particularly of Dalit and Muslim women, to respond to sexual violence. The barriers to reporting, to medical examination, to legal representation, to prosecutorial support, and to eventual conviction are so formidable that the effective impunity rate for sexual violence against marginalized women approaches one hundred percent.

4.2 The Kolkata Doctor Case: Workplace Violence and the Medical Profession

The rape and murder of a 31-year-old doctor in a government hospital in Kolkata city in August 2024 prompted widespread protests demanding justice and better security and facilities at medical campuses and hospitals. The attack cast a spotlight on how millions of Indian women remain exposed to abuse in the workplace and continue to face severe barriers to justice for sexual violence. Human Rights Watch

The case, in which a trainee doctor named Moumita Debnath was found raped and murdered in the seminar hall of RG Kar Medical College and Hospital in Kolkata on the morning of August 9, 2024, triggered one of the largest sustained protests by medical professionals in Indian history. Doctors across the country went on strike demanding better safety conditions at hospitals. The protests had a particular character: they were led primarily by women medical professionals who articulated a feminist analysis of workplace safety that went beyond the specific incident to challenge the structural conditions that made medical campuses, with their long shifts, isolated spaces, and hierarchical cultures, sites of particular risk for women.

The legal and political handling of the case was deeply troubled. The initial investigation was conducted by the Kolkata Police, whose relationship with the ruling Trinamool Congress

government in West Bengal created conflicts of interest that were immediately noted by critics. The principal accused, a person with connections to TMC political networks, was identified relatively quickly, but allegations of a larger conspiracy and of institutional failures at the hospital administration level were not adequately investigated. The Supreme Court took suo motu cognizance of the case and set up a National Task Force to recommend improvements in the safety conditions of healthcare workers. But the broader pattern of violence against women in workplaces, in public spaces, and in the home remained unaddressed by any systemic response.

The jurisprudential significance of the case lies partly in what it revealed about the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013, commonly known as the POSH Act, which was enacted following the Vishaka guidelines. The POSH Act requires every workplace with ten or more employees to establish an Internal Complaints Committee to receive and adjudicate complaints of sexual harassment. The implementation of this requirement has been deeply inadequate: surveys consistently find that a significant proportion of workplaces, particularly smaller establishments and government institutions, have not established ICCs. Even where ICCs exist, their independence from institutional power hierarchies is often compromised. The Kolkata hospital case occurred in a workplace that should have had an active ICC and did not function as intended.

4.3 The Pattern of Impunity: Statistical and Institutional Analysis

The National Crime Records Bureau (NCRB) data on crimes against women provides a surface-level picture of the scale of the problem. According to the NCRB's Crime in India 2022 report (the most recent available for statistical analysis as of 2026), over 445,000 crimes against women were reported nationally, including 31,516 cases of rape. But these headline numbers are profoundly misleading in two directions simultaneously: they both overstate and understate the reality.

They overstate the reality in the sense that the conviction rate for rape cases in India is approximately twenty-eight percent, meaning that over seventy percent of reported rape cases end without conviction. This low conviction rate reflects multiple failures: poor quality of investigation, inadequate evidence collection, victim hostile attitudes in the legal system, witness intimidation, and protracted trials during which victims disengage from the process. But it also means that a significant proportion of what is counted as "crime against women" in NCRB statistics never results in any legal accountability for the perpetrator.

They understate the reality in a much more fundamental sense: the vast majority of sexual violence in India is never reported. The barriers to reporting are immense. For a Dalit woman in a rural area, reporting a rape to police who are likely to be from a higher caste, who may be personally acquainted with or politically aligned with the perpetrator's family, who may refuse to register the FIR, and who may themselves victimize the complainant in the course of the investigation, is not merely daunting. It is extremely dangerous. The punishment of those who report sexual violence, through counter-complaints, through social ostracism, through economic pressure, and in some cases through retaliatory violence, is a documented pattern.

The Dalit human rights organization Equality Labs, working with Dalit communities across India, estimated in a 2023 report that the actual incidence of sexual violence against Dalit women was approximately ten times the officially reported figures, based on community-level surveys and the systematic documentation of cases that never reached the formal legal system.

The jurisprudential analysis of impunity is grounded in the distinction between formal and substantive equality. India's rape law, following the amendments made after the brutal gang rape and murder in Delhi in December 2012 (the Nirbhaya case), is formally gender-neutral in some respects and has enhanced penalties for aggravated rape. But formal legal equality, the same law applying to everyone, does not produce substantive equality of treatment when the institutions that apply the law are themselves structured by the very hierarchies that produce the violence. The law cannot be evaluated in isolation from the institutional environment in which it operates.

4.4 Child Marriage, Child Labor, and the Rights of the Child

India's situation with respect to children's rights reflects the same pattern of impressive formal legal frameworks and catastrophically inadequate implementation that characterizes its approach to rights more broadly. The Prohibition of Child Marriage Act of 2006 prohibits marriage of girls under eighteen and boys under twenty-one. The Right of Children to Free and Compulsory Education Act of 2009 (Right to Education Act) guarantees free and compulsory education for all children aged six to fourteen. The Child Labour (Prohibition and Regulation) Amendment Act of 2016 prohibits the employment of children below fourteen in any occupation and children between fourteen and eighteen in hazardous occupations.

According to UNICEF, as of 2023, India remained home to the largest number of child brides worldwide. One in three of the world's child brides lived in the country. More than half of the girls and women who married in childhood lived in five states: Uttar Pradesh, Bihar, West Bengal, Maharashtra, and Madhya Pradesh. U.S. Department of State The persistence of child marriage at this scale, despite formal legal prohibition, reflects the intersection of poverty, gender discrimination, caste customs, and the failure of state mechanisms to actually enforce the law.

The Convention on the Rights of the Child (CRC), which India ratified in 1992, places binding obligations on India to protect children from all forms of exploitation, abuse, and violence, and to ensure their access to education, health care, and adequate standard of living. India's compliance with these obligations is reviewed periodically by the Committee on the Rights of the Child, which in its most recent concluding observations in 2014 raised concerns about child marriage, child labor, trafficking, and the malnutrition that affects a significant proportion of Indian children.

The malnutrition situation is particularly stark. India's Global Hunger Index ranking, at 111th out of 125 countries in 2023, reflects child malnutrition rates that are among the highest in the world, exceeding those of sub-Saharan African countries with much lower GDP per capita. Stunting (low height for age, reflecting chronic malnutrition) affects approximately thirty-five percent of Indian children under five. Wasting (low weight for height, reflecting acute malnutrition) affects approximately nineteen percent. These figures represent not merely a development failure but a

human rights violation: the right of every child to an adequate standard of living, including adequate food, is clearly established in both the CRC and the ICESCR.

CHAPTER FIVE: ECONOMIC RIGHTS, LABOR LAW, AND THE EXPLOITATION OF INDIA'S WORKING CLASS

5.1 The Labor Law Reforms: Consolidation and Regression

The Modi government's 2019-2020 labor law reforms, which consolidated twenty-nine central labor laws into four Labor Codes (the Wage Code, the Industrial Relations Code, the Social Security Code, and the Occupational Safety, Health and Working Conditions Code), were presented as simplification and modernization. But the content of the reforms, as analyzed by labor economists, trade unions, and human rights scholars, represents a significant regression in workers' rights protection that will affect hundreds of millions of Indian workers.

The Industrial Relations Code 2020 is the most significant. It raises the threshold for mandatory employer consent before layoffs or plant closures from one hundred workers to three hundred, which means that establishments with fewer than three hundred workers can retrench employees without seeking government permission. In a country where over ninety percent of establishments employ fewer than three hundred workers, this effectively liberalizes the dismissal of the vast majority of India's formal sector workforce. The Code also restricts the right to strike by extending the mandatory notice period for strikes, requiring conciliation proceedings before strikes can begin, and prohibiting strikes during the pendency of conciliation or arbitration proceedings. Given that conciliation proceedings can be extended indefinitely, the practical effect is to make legal strikes extremely difficult to organize in most circumstances.

The Wage Code 2019, while extending minimum wage coverage to all workers for the first time (previously, minimum wage law applied only to workers in notified scheduled employments), does not effectively guarantee adequate wages. The minimum wage rates set by state governments remain extremely low, falling far below any reasonable calculation of a living wage that would meet basic needs. The International Labour Organization's definition of a living wage is one that enables workers to meet basic needs including food, housing, clothing, healthcare, and education for a family of typical size. No Indian state's minimum wage comes close to meeting this standard for most workers.

The philosophical analysis of labor rights draws on multiple traditions. From the Kantian perspective that underlies much of human rights philosophy, labor rights are rights that protect the dignity of workers against their treatment as mere means to the ends of employers or of economic growth. The reduction of a person's labor to a commodity subject to the undifferentiated workings of market forces is an affront to human dignity. This analysis is also Marxist, in the sense that Marx's concept of alienated labor, labor that is separated from the worker's own purposes and used purely in the service of the employer's profit, captures something true about the human costs of unregulated market labor relations.

5.2 Informal Labor and the Migrant Worker Crisis

India's economy is characterized by one of the world's largest informal labor sectors. The International Labour Organization estimated that approximately ninety percent of India's workforce is engaged in informal employment, without employment contracts, without social security coverage, without labor rights protection, and without job security. These workers, who include agricultural laborers, construction workers, domestic workers, street vendors, home-based workers, and those in the vast unorganized manufacturing sector, are effectively outside the protective reach of most Indian labor law.

The COVID-19 pandemic of 2020-2021 revealed the catastrophic vulnerability of India's informal workforce with unprecedented starkness. When the national lockdown was announced with four hours' notice on March 24, 2020, tens of millions of migrant workers, who had traveled from poor states like Uttar Pradesh, Bihar, Rajasthan, and Odisha to work in construction, manufacturing, and services in urban centers, were suddenly stranded without income, without housing, and without access to the public distribution system food entitlements that were tied to their home districts. Images of hundreds of thousands of workers walking home along highways, in some cases hundreds of kilometers, while their children and possessions were carried on their backs, became among the most iconic images of the pandemic period.

The migrant worker crisis of 2020 illustrated multiple failures simultaneously: the failure of the portability of social protection systems, the inadequacy of the public distribution system for workers away from home, the absence of any emergency cash transfer mechanism for informal workers, and the fundamental vulnerability of ninety percent of India's workforce to any economic disruption. The subsequent labor code reforms, rather than addressing these vulnerabilities through the strengthening of social protection coverage, moved in the direction of further labor market deregulation.

5.3 Bonded Labor, Child Labor, and Modern Slavery

The Bonded Labour System (Abolition) Act of 1976 formally abolished bonded labor in India, and the Constitution itself prohibits forced labor under Article 23. But bonded labor, in which workers are bound to an employer through debt relationships that they cannot repay, continues to affect millions of people, primarily Dalits, Adivasis, and migrants, in multiple sectors including agriculture, brick kilns, stone quarrying, mining, and carpet weaving.

The National Human Rights Commission estimated in a 2012 report that there were approximately eighteen million bonded laborers in India, though the methodology for this estimate was contested and the true figure is unknowable given the informal and hidden character of the system. The International Labour Organization's global estimates of modern slavery, updated in 2022, found India to have among the highest numbers of people in forced labor of any country in the world, consistent with its population size but also reflecting the persistence of caste-based exploitation mechanisms that formal law has been unable to eradicate.

The jurisprudential analysis of bonded labor's persistence despite legal prohibition illustrates a problem that runs throughout India's rights situation: the gap between law on the books and law

in action. The Bonded Labour (Abolition) Act is clear. The constitutional prohibition of forced labor in Article 23 is clear. But the enforcement mechanisms are deeply inadequate. Labor inspectors in states like Uttar Pradesh, Rajasthan, and Andhra Pradesh are too few, too under-resourced, and too embedded in the caste and political networks that perpetuate bonded labor to provide effective enforcement. The rehabilitation of freed bonded laborers is chronically underfunded and poorly implemented.

The philosophical problem is analyzed effectively by Henry Shue in "Basic Rights": the right to subsistence, which is violated by bonded labor and child labor, is a fundamental right in the sense that it is a precondition for the exercise of all other rights. A person who cannot eat cannot exercise any freedom. A child who cannot go to school because they must work cannot develop the capabilities that would allow them to exercise any future right effectively. The deprivation of subsistence rights is therefore not merely one violation among many: it is a violation of the precondition of all rights, which makes it the most fundamental form of rights violation possible.

5.4 The Adani Connection: Crony Capitalism and Rights Violations

The relationship between the Modi government and the Adani Group, the business empire built by Gautam Adani, who was the world's third richest person at one point in 2022, illustrates the intersection of economic power, political power, and human rights violation that characterizes India's political economy under Hindu nationalism.

The Hindenburg Research report of January 2023, which accused the Adani Group of systematic stock manipulation, accounting fraud, and regulatory evasion, triggered a controversy that revealed the deep entanglement of the Adani Group's expansion with the Modi government's policy choices. Adani Group companies have obtained major port, airport, power, and infrastructure contracts from the Indian government. Several of these projects are located in Adivasi or coastal areas where affected communities have raised serious objections to the environmental and social impacts of the projects. The Forest Rights Act, which was supposed to protect Adivasi rights in relation to such projects, has been systematically circumvented in the grant of environmental and forest clearances for Adani Group projects in areas like the Hasdeo Arand coal mines in Chhattisgarh.

The Hasdeo Arand case is among the most significant ongoing environmental and human rights conflicts in India. The Hasdeo Arand forest in Chhattisgarh is one of the largest intact stretches of dense forest remaining in central India and is home to several Adivasi communities including Gond, Oraon, and Korwa, whose traditional rights in the forest are protected by the Forest Rights Act. The central and state governments granted mining clearances to the Adani Group for coal mining in the area despite documented opposition from the affected communities and despite the requirements of the Forest Rights Act that such clearances require the free, prior, and informed consent of the gram sabhas (village assemblies) of the affected communities. The gram sabhas in Hasdeo Arand have repeatedly and formally rejected the mining project. The government has proceeded anyway.

The right to free, prior, and informed consent (FPIC) of indigenous peoples before decisions affecting their lands and resources is established in the UN Declaration on the Rights of

Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007. India voted in favor of UNDRIP, which creates at minimum a strong expectation of compliance. India is also bound by ILO Convention 107 on the Protection and Integration of Indigenous and Tribal Populations, which includes analogous protections. The displacement of Adivasi communities from their ancestral forests for Adani Group mining projects, in the face of their documented refusal of consent, violates both domestic law (the Forest Rights Act) and international law (UNDRIP, ILO Convention 107).

CHAPTER SIX: DIGITAL RIGHTS, SURVEILLANCE, AND THE CONSTRUCTION OF THE TECHNO-AUTHORITARIAN STATE

6.1 The Pegasus Scandal and State Surveillance

The July 2021 revelation by the Pegasus Project, a collaborative investigation by sixteen media organizations worldwide including The Wire in India, that the Israeli spyware Pegasus had been used to target journalists, opposition politicians, lawyers, human rights defenders, and constitutional officials in India was among the most significant surveillance scandals in the country's democratic history. Pegasus, developed by the Israeli company NSO Group and sold only to government clients, allows the complete remote access to and monitoring of any smartphone, including the reading of encrypted messages, activation of the camera and microphone, and extraction of all stored data, without any visible sign on the target's device.

The Indian targets identified by the Pegasus Project included journalists who covered the Modi government critically (including Siddharth Varadarajan, the founding editor of The Wire), opposition politicians (including Congress leader Rahul Gandhi), civil society activists, and, in one of the most constitutionally explosive revelations, sitting Supreme Court judges and their relatives. The targeting of Supreme Court judges was particularly significant because at the time, the court was dealing with a case involving allegations against the Chief Justice himself, suggesting the possibility that surveillance was being used to monitor the court's internal deliberations.

The government's response was to neither confirm nor deny whether it had purchased or used Pegasus, citing national security. The Supreme Court, responding to petitions from journalists and civil society groups, appointed a technical committee chaired by former Supreme Court judge Justice R.V. Raveendran to investigate. The committee's report, submitted to the Court in 2022, found that it had not been able to confirm the targeting of the specific individuals named by the Pegasus Project but noted that the government had not cooperated with the investigation. The Court accepted the committee's report without ordering further investigation or disclosure, and the matter was effectively closed without any accountability.

The philosophical and legal analysis of state surveillance draws on a rich tradition. The concept of the "panopticon," developed by Jeremy Bentham as an architectural device for continuous surveillance of prisoners without the prisoners knowing whether they are being observed at any given moment, was adopted by Michel Foucault in "Discipline and Punish" (1975) as a metaphor

for modern power: the internalization by subjects of the consciousness that they may always be under surveillance, which produces self-discipline and conformity without the need for constant actual observation. The digital panopticon created by state surveillance of communications is a technological realization of Bentham's architectural fantasy, and its consequences for the behavior of journalists, activists, lawyers, and political opponents are precisely what Foucault's analysis would predict: the chilling of dissent, the self-censorship of communication, and the internalization of the state's presence.

The right to privacy in Indian constitutional law was definitively established by the nine-judge Supreme Court bench in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), which unanimously held that the right to privacy is a fundamental right under Article 21. The multiple concurring judgments in the case engaged extensively with the philosophical foundations of privacy, with Justice D.Y. Chandrachud's judgment being the most philosophically sophisticated, engaging with the argument that privacy is not merely a liberty interest but a constitutive element of personhood and dignity.

But the Puttaswamy judgment, despite establishing privacy as a fundamental right, did not resolve the specific question of what the state may do in the name of national security. The judgment acknowledged that privacy can be limited for legitimate state purposes but specified that any limitation must be in accordance with a validly enacted law, must serve a legitimate state purpose, and must be proportionate and necessary. The use of Pegasus spyware against journalists, opposition politicians, and activists is manifestly disproportionate and unnecessary for any legitimate national security purpose: the individuals targeted were not terrorism suspects but critics of the government. And in India, unlike in the European Union where the GDPR creates a comprehensive data protection framework, there is as of 2026 still no comprehensive data protection legislation that would provide effective legal remedies for surveillance abuse.

6.2 The Digital Personal Data Protection Act 2023: Promises and Gaps

The Digital Personal Data Protection Act (DPDPA) of 2023 was presented as India's answer to the demands for a comprehensive data protection framework, demands that had been building since the Puttaswamy judgment and that had generated several drafts and years of consultation. The Act establishes rights of data principals (individuals) including the right to information about what data is collected, the right to correction and erasure of data, and the right to grievance redressal. It imposes obligations on data fiduciaries (those who collect and process data) to protect the data they hold and to use it only for the purposes for which it was collected.

But the DPDPA has several significant gaps that undermine its effectiveness as a rights protection instrument. Most critically, Section 17 of the Act provides that the central government can exempt any of the Act's provisions from applying to any instrumentality of the state on grounds of national security, public order, or sovereignty. This is an extraordinarily broad exemption that could effectively exclude the government's own data processing activities, including surveillance activities, from the Act's protections. It defeats the purpose of a data protection law, which is to protect individuals' data from the very state actors who are most likely to collect and misuse data.

The comparison with the European Union's General Data Protection Regulation is instructive. The GDPR, which has been in force since May 2018 and has served as the global benchmark for comprehensive data protection, does allow member states to exempt certain security-related processing from its requirements, but the exemptions must be specific, proportionate, and necessary. The blanket exemption in Section 17 of the DPDPA is neither specific, proportionate, nor necessary in the GDPR sense.

The DPDPA also creates the Data Protection Board as the regulatory body, but its independence from the central government is compromised by the fact that the Chairperson and Members of the Board are appointed by the central government on the recommendation of a committee that itself includes government officials. Given the track record of other regulatory bodies in India under the current government, the prospects for genuinely independent enforcement of the DPDPA are not encouraging.

6.3 Artificial Intelligence and Emerging Rights Violations

The rapid development and deployment of artificial intelligence systems in India creates new categories of human rights risk that the existing legal framework is entirely unprepared to address. Several specific AI-related risks are already materializing.

Facial recognition technology is being deployed by police forces across India, including in Delhi, Mumbai, Hyderabad, and in the Jammu and Kashmir context, without any specific legislative authorization, without any clear standards for accuracy or error rate, without any public accountability mechanism, and without any procedure for individuals to challenge their identification as persons of interest. The accuracy concerns are particularly acute for AI facial recognition systems trained primarily on light-skinned faces when deployed against populations of darker complexions: documented accuracy disparities of this kind mean that individuals from Dalit, Adivasi, and Muslim communities, whose skin tone profiles may differ from the training data, face higher rates of false identification.

The National Crime Records Bureau's CCTNS (Crime and Criminal Tracking Network and Systems) database, which is being expanded and integrated with facial recognition capabilities, creates a vast surveillance infrastructure that operates outside any meaningful legal framework. The Aadhaar biometric identification system, which links biometric data to a range of government services and is now effectively mandatory for access to food rations, bank accounts, mobile phones, and numerous other essential services, creates a comprehensive digital identity infrastructure that can be used for tracking, profiling, and exclusion.

The exclusionary function of Aadhaar is particularly concerning from a rights perspective. The system requires biometric identification (fingerprints and iris scans) for authentication. For the elderly, for agricultural workers whose fingerprints have been worn away by labor, and for others with biometric identification challenges, this requirement creates a barrier to accessing social protection that is directly experienced as exclusion. Numerous documented cases exist of elderly persons being denied food rations because their biometric authentication failed, sometimes literally dying of hunger in a country with food grain surpluses, because a technical system could not read their worn fingerprints.

The jurisprudence of algorithmic decision-making, developing rapidly in Europe through the GDPR's provisions on automated decision-making (Article 22) and through the EU AI Act adopted in 2024, has not yet been developed in India. The EU AI Act classifies AI systems that are used for biometric identification by law enforcement, for social scoring, and for other high-risk applications, and imposes strict requirements for transparency, accuracy, human oversight, and fundamental rights impact assessment. India has no comparable regulatory framework, and the pace of AI deployment in law enforcement and social governance is outstripping any regulatory response.

6.4 Social Media, Hate Speech, and the Platform Responsibility Debate

The relationship between social media platforms, hate speech, and communal violence in India is one of the most complex and contested issues in contemporary digital rights analysis. The empirical evidence of a connection between social media content and offline violence, particularly communal violence targeting Muslims, is substantial. The Delhi riots of February 2020, which killed over fifty people (the majority Muslim) and were preceded by weeks of inflammatory social media content calling for violence against Muslims, provided the most dramatic recent example. Research by Samanvaya Sen and others has shown strong correlations at the district level between Facebook penetration and communal violence incidents in India.

The government's response to the social media-violence nexus has been, characteristically, directed not at removing hate speech against minorities but at suppressing speech critical of the government. The IT Rules 2021 create mechanisms for rapid content takedown at the government's direction, which have been used primarily to suppress political dissent rather than to remove violent hate speech. The Bombay High Court's striking down of the government's fact-checking unit is relevant here: the government was attempting to create a mechanism for content removal that it could control, rather than genuinely addressing the documented harm from anti-minority hate speech.

The platforms themselves, including Meta (Facebook and Instagram), X (formerly Twitter), WhatsApp, and YouTube, have faced extensive criticism for inadequate enforcement of their own content policies against anti-Muslim hate speech in India. A 2021 investigation by TIME magazine documented that Facebook India's policy choices were influenced by commercial relationships with BJP-affiliated advertisers and that hate speech from BJP-connected accounts was removed far less frequently than comparable content from other sources.

The international legal framework for platform responsibility is still developing. The UN Special Rapporteur on Freedom of Opinion and Expression has issued guidance suggesting that states should not place broad responsibility on platforms for monitoring and removing content, as this creates incentives for over-removal of lawful speech. But states do have obligations to protect individuals from discriminatory violence, which includes addressing the social media ecosystems that facilitate incitement to such violence.

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CHAPTER SEVEN: EXTRATERRITORIAL VIOLATIONS: INDIA'S ASSASSINATION PROGRAMME AND TRANSNATIONAL REPRESSION

7.1 The Allegations of Transnational Repression

The concept of "transnational repression" refers to the practice of states suppressing the political activities of their citizens or diaspora communities living in foreign countries, using methods including surveillance, harassment, threats to family members within the country, and, in the most extreme cases, physical violence or assassination. The term has been developed and popularized by Freedom House, whose annual reports on transnational repression have documented the practice by states including Russia, China, Saudi Arabia, and Iran, among others.

India was added to the list of states engaged in transnational repression following a series of extraordinary events beginning in 2023. In September 2023, Canadian Prime Minister Justin Trudeau publicly stated before Parliament that Canada had credible evidence that Indian government agents had been responsible for the assassination of Hardeep Singh Nijjar, a Canadian citizen and Sikh separatist leader, who was shot dead outside a Sikh temple in Surrey, British Columbia, on June 18, 2023. Canada subsequently expelled Indian diplomats and the bilateral relationship entered one of its worst periods in decades. India denied any involvement and expelled Canadian diplomats in return.

The United States Department of Justice, in October 2023, unsealed an indictment charging an Indian national named Nikhil Gupta with conspiring with an Indian government official to arrange the assassination of Gurpatwant Singh Pannun, a dual US-Canadian citizen who leads the Sikh separatist group Sikhs For Justice, on US soil. The indictment alleged that the Indian government official had coordinated the plot and that Gupta had engaged a person he believed to be a hitman (who was in fact an undercover law enforcement agent) for the assassination. India eventually acknowledged in December 2023 that it was investigating the matter and dismissed a security official connected to the allegations.

Several foreign governments accused Indian intelligence agencies of targeting terrorism suspects and separatist leaders for assassination in Canada, the United States, and Pakistan. Human Rights Watch This was perhaps the most significant reputational crisis India had faced in its entire post-independence history in relation to human rights and the rule of law. A democratic state that claims to be a rule-of-law order cannot have its government officials credibly accused of ordering assassinations on the soil of allied democracies.

7.2 The Legal Framework: State-Sponsored Assassination and International Law

The assassination of persons by state agents on foreign territory is a violation of multiple fundamental principles of international law. The most basic is the principle of sovereign equality: every state has exclusive jurisdiction over the persons within its territory, and one state's exercise of coercive power, including lethal force, on another state's territory without that state's consent is an act of aggression.

The specific legal analysis depends on the status of the person targeted. Where the target is a foreign national, as in the case of Hardeep Singh Nijjar (a Canadian citizen), the assassination is an unlawful killing under the domestic law of the state where it occurs, and potentially a violation of that state's sovereignty under international law. Where the target is a national of the assassinating state, additional questions arise about the state's obligation to respect the rights of its own citizens even when they are abroad.

Under the ICCPR, Article 2(1) requires each state party to respect and ensure the rights recognized in the Covenant "to all individuals within its territory and subject to its jurisdiction." The phrase "subject to its jurisdiction" has been interpreted by the UN Human Rights Committee to extend beyond territorial boundaries in certain circumstances, including when a state exercises effective control over a person in another territory. The extraterritorial assassination of a person who is a national of the assassinating state, particularly when undertaken in the context of a deliberate policy of targeting dissidents abroad, constitutes an extrajudicial killing that violates Article 6 of the ICCPR regardless of where it occurs.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has consistently taken the position that states may not assassinate persons abroad outside of armed conflict, even if those persons are engaged in activities the state considers threatening. The use of lethal force must always be the last resort, necessary and proportionate, and subject to prior judicial authorization where feasible. A targeted assassination programme, even if directed at persons the state designates as terrorists, is incompatible with these requirements when applied outside an armed conflict zone.

The comparison with Israel's targeted killing programme and the US drone strike programme is instructive. Both Israel and the US have developed elaborate legal justifications for targeted killing outside armed conflict zones, based on theories of self-defense against non-state actors, that have been extensively criticized by international law scholars. But even these justifications, which are themselves controversial, require a showing of imminent threat and the impossibility of capture. The alleged Indian targets were political figures engaged in diaspora advocacy, not persons presenting any credible imminent violent threat.

7.3 Passport Revocation and the Mobility of Dissent

One dimension of transnational repression that is more diffuse but equally significant is the use of passport revocation and the denial of travel documents to control the movement and activities of critics and activists abroad. In its 2024 Special Report on the Freedom of Movement, Freedom House noted that in addition to passports, the government had allegedly targeted other forms of travel documents, including revoking Overseas Citizenship of India (OCI) statuses. U.S. Department of State

The OCI (Overseas Citizen of India) status, which provides persons of Indian origin with indefinite stay rights in India and certain economic rights, is an important link for the Indian diaspora. Its revocation is a significant deprivation for those who hold it, and its use as a political tool, by revoking the status of persons whose public activities the Indian government dislikes, is

a form of political punishment that chills the exercise of free expression by diaspora communities worldwide.

The revocation of OCI cards from individuals who have been critical of the Indian government has been documented in multiple cases, including that of Kamal Chenoy, a retired professor whose OCI was revoked after he signed a petition critical of the government. The documentary filmmaker Leena Manimekalai, a Canadian-Indian filmmaker who created an artwork featuring a hijab-clad woman as the goddess Kali, had her OCI revoked following Hindu nationalist outrage about her work. These revocations use immigration status as a mechanism of political punishment, a practice that is incompatible with the freedom of expression and that raises serious questions about whether OCI status can lawfully be revoked on political grounds.

7.4 The BSF and Border Violence Toward Bangladesh

India's Border Security Force (BSF) has maintained a pattern of lethal violence against persons crossing the India-Bangladesh border that has been documented by human rights organizations for many years and that constitutes one of the clearest examples of extrajudicial killing in India's human rights record. The border between India and Bangladesh is approximately four thousand kilometers long, making it one of the longest land borders in the world, and is fenced along a significant portion of its length with a chain-link fence. The BSF is authorized to use force to prevent illegal border crossing but is not authorized to use lethal force against unarmed persons.

According to reports, India's Border Security Force allegedly killed at least 10 Bangladeshis at the India-Bangladesh border in the first four months of 2025. The BSF has frequently used excessive force along the Bangladeshi border with impunity, targeting both Indians as well as irregular immigrants and cattle traders from Bangladesh. Human Rights Watch

The historical pattern is more extensive. The human rights organization Odhikar in Bangladesh has documented BSF killings along the India-Bangladesh border going back two decades. From 2000 to 2024, according to Odhikar's documentation, over one thousand Bangladeshis were killed by the BSF, with the annual toll ranging from dozens to over one hundred in peak years. The victims are overwhelmingly poor villagers and cattle traders who cross the border for economic reasons, not the security threats that lethal force is intended to address.

Under international human rights law, specifically the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), law enforcement officials may use lethal force only when strictly unavoidable to protect life. The use of lethal force against unarmed cattle traders or irregular migrants who pose no threat to life is a violation of this standard and constitutes extrajudicial killing under international law.

Bangladesh has repeatedly raised the issue of BSF killings with India through diplomatic channels without achieving any sustained reduction in the practice. The asymmetry of the bilateral relationship, with India as the far larger and more powerful state, has effectively prevented Bangladesh from pressing the issue more forcefully. This is a clear example of how India's regional hegemony translates into impunity for lethal violations of the human rights of the citizens of neighboring states.

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CHAPTER EIGHT: THE QUESTION OF GENOCIDE: ANALYTICAL AND LEGAL FRAMEWORKS

8.1 Genocide as a Legal and Philosophical Category

The crime of genocide occupies a unique position in international criminal law and international human rights law. It is the crime that the Nuremberg Tribunal's chief prosecutor, and subsequently the entire post-war international legal order, identified as the ultimate human evil, the intentional destruction of a group of human beings on account of who they are rather than what they have done. The Genocide Convention of 1948, which India ratified in 1959, defines genocide as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. The acts covered include killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.

The application of the genocide concept to situations other than the Holocaust and the Rwandan genocide has been deeply contested. Scholars of genocide, including Gregory Stanton (whose stages of genocide model is widely used), Israel Charny, and Samantha Power, have debated extensively what level of violence, what degree of intent, and what scale of harm triggers the genocide label. Stanton's model identifies ten stages of genocide: classification, symbolization, discrimination, dehumanization, organization, polarization, preparation, persecution, extermination, and denial. Each stage can be present without the genocidal process reaching the final stages of mass killing.

The legal standard for genocide requires "specific intent" (dolus specialis in international criminal law terminology): the perpetrator must intend not merely to commit the acts in question but to destroy the group in whole or in part. This is a very high standard of proof, much higher than the standard for crimes against humanity (which can be committed without any specific group-destruction intent). The difficulty of proving specific genocidal intent has led to extensive debate about whether the genocide convention adequately captures the full range of group-destruction practices, with some scholars arguing for a broader "atrocity crime" or "mass atrocity" framework that does not require proof of specific intent.

8.2 India's Record and the Genocide Question

The application of the genocide concept to India is deeply contested but cannot be avoided in a serious jurisprudential textbook on this subject. Several scholars and human rights organizations have analyzed India's record against Stanton's stages of genocide framework and against the legal definition in the Genocide Convention.

With respect to the Muslim community, the analysis is particularly significant. Stanton himself has commented that India shows multiple indicators that he associates with early and middle stages of genocidal processes: the dehumanizing rhetoric used by Hindu nationalist leaders and

media against Muslims (describing them as "termites," "infiltrators," "jihadis"), the systematic exclusion of Muslims from citizenship rights through mechanisms like the CAA, the organized violence of mob lynchings with state complicity, the demolition of mosques and Muslim properties, the legal harassment of Muslim institutions and civil society, and the atmosphere of existential threat that has been created for the Muslim community.

The International Association of Genocide Scholars (IAGS) has not formally designated the Indian situation as genocide. The Genocide Watch organization, founded by Stanton, has classified India as a country of "Genocide Warning" at various points in the recent period. The distinction matters legally: genocide requires proof of specific intent to destroy a group "as such," and the Indian government's stated policy objective is not the physical destruction of the Muslim community but various other goals (national security, border control, counter-terrorism, urban development). That the policies are implemented in ways that have severely harmful effects on Muslims as a community does not automatically establish the specific genocidal intent required.

However, the legal analysis cannot stop at the genocide threshold. Even if the specific intent standard for genocide is not met, much of what has been described throughout this textbook, including the systematic persecution of Muslims through mob violence, legal discrimination, property demolition, and exclusionary legislation, constitutes crimes against humanity under customary international law and the Rome Statute, specifically the crime of persecution, which consists of severe deprivation of fundamental rights of an identifiable group on discriminatory grounds. India's non-ratification of the Rome Statute means that the ICC cannot exercise jurisdiction over these acts, but that does not affect their character under international law.

Gregory Stanton's Genocide Watch updated its analysis of India in 2024 and 2025, maintaining the warning status and specifically noting the post-Pahalgam attack escalation of anti-Muslim violence and rhetoric as a particularly concerning development. The escalation following the April 2025 terrorist attack, which killed twenty-six people, mostly Hindu tourists, in the Kashmir Valley, and which was followed immediately by widespread anti-Muslim violence across multiple Indian states, demonstrates the vulnerability of the Muslim community to collective punishment whenever a security incident can be attributed, rightly or wrongly, to Muslim perpetrators.

Following the deadly attack in Jammu and Kashmir, hate speech against Muslims increased, with at least 64 incidents reported in the first 10 days. Muslims were attacked in various states. A Hindu man claimed responsibility for shooting a Muslim worker in Uttar Pradesh as retribution for the Kashmir attack. In Karnataka, a Muslim man was killed after he allegedly shouted pro-Pakistan slogans during a cricket match. Human Rights Watch

The collective punishment of Muslims for the acts of Kashmiri militants, who are themselves a tiny fraction of India's Muslim population, is an expression of the Hindu nationalist ideology's treatment of all Indian Muslims as a community whose members bear collective responsibility for the actions of any Muslim. This logic of collective responsibility is incompatible with the most basic principles of individual criminal responsibility that underlie both domestic criminal law and international humanitarian law.

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CHAPTER NINE: INDIA AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM: ENGAGEMENT, EVASION, AND CONTEMPT

9.1 India's Treaty Obligations: The Gap Between Ratification and Compliance

India is a party to the core international human rights treaties: the International Covenant on Civil and Political Rights (ratified 1979), the International Covenant on Economic, Social and Cultural Rights (ratified 1979), the Convention on the Elimination of All Forms of Racial Discrimination (ratified 1968), the Convention on the Elimination of All Forms of Discrimination against Women (ratified 1993), the Convention on the Rights of the Child (ratified 1992), and the Convention Against Torture (ratified 1987). Each of these ratifications created binding legal obligations under international law.

The gap between ratification and compliance in India's case is among the widest of any state that would typically be considered a democracy. The system by which treaty compliance is monitored through periodic state reports and the treaty bodies' review process reveals the extent of this gap with particular clarity. The UN Human Rights Committee's July 2024 review of India's compliance with the ICCPR, discussed in Part One and referred to again here, provides the most recent comprehensive assessment.

The UN Human Rights Committee voiced concern over the application of counter-terrorism laws for decades in "disturbed areas," such as districts in Manipur, Jammu and Kashmir, and Assam, which it said has led to widespread and grave human rights violations, including excessive use of force leading to unlawful killings, prolonged arbitrary detention, sexual violence, forced displacement and torture. The Committee urged India to comply with its obligations under the ICCPR and to ensure that any counter-terrorism and other security measures in the so-called disturbed areas are temporary, proportionate, strictly necessary and subject to judicial review. It also asked India to establish a mechanism to initiate a process to acknowledge responsibility and ascertain the truth regarding human rights violations in disturbed areas. United Nations

India's response to these findings has been consistent with its longstanding approach: a formal engagement with the treaty body process (submitting reports, sending delegations to reviews) combined with substantive rejection of the bodies' findings and a refusal to take meaningful action on their recommendations. The Indian government delegation at the July 2024 ICCPR review defended the government's record, challenged the Committee's characterization of the UAPA and other laws, and asserted that India's domestic institutions are adequate to address any rights concerns.

The philosophical dimension of India's approach to international human rights accountability involves a specific theory of sovereignty that deserves examination. India's position is grounded in an interpretation of Article 2(7) of the UN Charter, which provides that nothing in the Charter "shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State." On this interpretation, the international human rights system,

insofar as it monitors the treatment of a state's own citizens, constitutes interference in domestic affairs.

But this interpretation of Article 2(7) has been consistently rejected by the international legal order. The UN's own organs, including the Security Council, have treated gross and systematic human rights violations as a threat to international peace and security, thereby bringing them within the sphere of international concern regardless of their domestic character. The International Court of Justice, in the Nicaragua case and subsequently, has developed an analysis of the relationship between sovereignty and human rights that rejects the view that sovereignty immunizes states from international scrutiny for the treatment of their own populations. And the UN General Assembly Resolution 60/1 of 2005, which established the "Responsibility to Protect" (R2P) doctrine, represents a formal consensus that sovereignty does not protect states from international responsibility when they commit or fail to prevent genocide, war crimes, ethnic cleansing, and crimes against humanity.

9.2 Special Procedures and India's Non-Cooperation

The UN Special Procedures system consists of a network of independent experts, called Special Rapporteurs and Special Representatives, appointed by the Human Rights Council to monitor specific human rights themes or country situations. There are currently over forty thematic special procedures mandates, covering topics including torture, extrajudicial killings, freedom of expression, freedom of religion, rights of indigenous peoples, the rights of internally displaced persons, and many others. India is subject to the full range of thematic mandates.

India maintains a standing invitation to UN Special Procedures. Still, it has accepted only two country visits in the past decade: that of the Special Rapporteur on adequate housing in 2016 and the Special Rapporteur on safe drinking water and sanitation in 2017. As of October 2025, at least 19 visit requests remain pending, including one from the Special Rapporteur on torture, first requested in 1999 and reiterated multiple times, most recently in 2021. Since 2011, India has replied to roughly one-third of over 200 communications sent by Special Procedures. Redress

The refusal to allow the Special Rapporteur on torture to visit India for over twenty-five years, despite India's ratification of the Convention Against Torture in 1987 and India's formal standing invitation to Special Procedures (which was issued by India voluntarily), is a remarkable illustration of the chasm between India's international human rights commitments and its actual behavior. The Committee Against Torture, which monitors compliance with the Convention Against Torture, has noted India's failure to implement the Convention's requirements in its review of India's periodic reports.

India has not recognized the competence of the Committee Against Torture to receive individual complaints under Article 22 of the Convention, nor has it recognized the Committee's authority to conduct inquiries under Article 20 where it receives "reliable information" indicating that torture is being practiced systematically. These are optional provisions of the Convention, and India's non-acceptance of them limits the accountability mechanisms available to individual victims of torture in India.

9.3 The Human Rights Council and India's Membership

India was elected to the UN Human Rights Council for the 2026-2028 term in October 2025. This election was both an opportunity and a paradox: a country with a documented and serious human rights crisis now sits as a member of the body responsible for monitoring and promoting human rights worldwide.

Across multiple UN mechanisms, including Special Procedures, Treaty Bodies, and the Office of the High Commissioner for Human Rights, India has consistently demonstrated a pattern of non-cooperation, rejection of findings, and reprisals against human rights defenders, activists, and civil society organizations. During India's previous membership period, between 2019 and 2024, India's record at the Human Rights Council was marked by repeated abstentions on key resolutions establishing investigations or accountability mechanisms for serious gross and systematic human rights violations and alleged war crimes, including on Sri Lanka, Myanmar, Xinjiang, and the Occupied Palestinian Territories. Redress

India's pattern of abstention from resolutions establishing accountability mechanisms is not accidental. It reflects the principle of "mutual protection": states that themselves resist international accountability are generally reluctant to support accountability mechanisms for other states, because doing so would undercut their position that such mechanisms constitute improper interference in domestic affairs. This dynamic, in which powerful states with poor human rights records use their UN positions to protect each other from accountability, is one of the fundamental structural weaknesses of the international human rights system.

The response from civil society to India's Human Rights Council membership has been sharp. Multiple civil society organizations urged Council members to evaluate India's candidacy and to seek explicit, time-bound commitments from the Government of India to accept pending country visit requests from Special Procedures, repeal the Jammu and Kashmir Public Safety Act, the National Security Act, and the Armed Forces Special Powers Act, and ensure that military personnel suspected of having committed serious human rights violations are brought to justice in fair trials before civilian courts. Redress

9.4 India's Treatment of UN Mechanisms: A Pattern of Contempt

The pattern of India's relationship with UN human rights mechanisms reveals a consistent posture that can accurately be described as contemptuous. The specific incidents are illustrative. When the UN High Commissioner for Human Rights published a report on the human rights situation in Kashmir in 2018, calling for AFSPA's repeal and an independent investigation of alleged abuses, the Indian government dismissed it as "fallacious" and "motivated." When the UN Human Rights Committee issued its concluding observations on India's ICCPR compliance, the government routinely rejected findings it disagreed with rather than engaging substantively with them. When UN experts expressed alarm in November 2025 about serious human rights violations committed by Indian authorities following the Pahalgam attack, India's response was consistent with its longstanding pattern of dismissing international human rights criticism as interference in internal affairs. OHCHR

The legal analysis of India's refusal to engage meaningfully with UN human rights mechanisms is clear. Article 56 of the UN Charter obligates all UN member states to "take joint and separate action in co-operation with the Organization" for the achievement of the purposes stated in Article 55, which include "universal respect for, and observance of, human rights and fundamental freedoms for all." India's systematic pattern of non-cooperation with UN Special Procedures, its rejection of treaty body findings, and its refusal to allow country visits constitutes a breach of its Charter obligations.

The political analysis is equally important: India's positions at the UN on human rights issues reflect not primarily a principled commitment to sovereignty but a calculated protection of its own freedom of action. India does not object equally to all international human rights monitoring. It has supported accountability mechanisms for some states and opposed them for others, based on geopolitical calculations rather than consistent principle. The selective invocation of sovereignty to resist scrutiny of its own record while supporting scrutiny of others it disfavors is not a principled position but an opportunistic one.

CHAPTER TEN: THE CONSTITUTIONAL AMENDMENTS QUESTION: MUST THE CONSTITUTION BE CHANGED?

10.1 Constitutional Mutations and the Basic Structure

Part One of this textbook described the basic structure doctrine developed in Kesavananda Bharati (1973) as India's principal constitutional safeguard against fundamental constitutional alteration through the amendment process. The doctrine holds that while Parliament can amend any provision of the Constitution, it cannot destroy its basic structure, which includes democracy, federalism, separation of powers, judicial review, secularism, and the protection of fundamental rights.

The question of whether the Indian Constitution requires amendment, and if so what amendments would advance rather than retard human rights, is among the most significant questions in Indian constitutional thought. Three categories of constitutional reform are worth examining: reforms that would strengthen rights protection, reforms that would address structural governance failures, and reforms that would bring the Constitution into alignment with India's international human rights obligations.

In the first category, the most important reform would be the conversion of the Directive Principles of State Policy, or at least the most specific and actionable of them, into justiciable rights. The right to work, the right to a living wage, the right to education beyond the elementary level, the right to health care, and the right to social security, all of which are mentioned in the Directive Principles, have been developed by the Supreme Court through creative Article 21 interpretation, but this interpretive approach has significant limitations. Making these rights explicitly justiciable would require legislative and executive action to realize them rather than leaving their realization to the discretionary and case-by-case character of public interest litigation.

The Committee on State Policy established by the UPA government in 2005, chaired by former Chief Justice M.N. Venkatachaliah, recommended a comprehensive review of the Constitution's implementation and several specific amendments. The committee's recommendations, which were substantive and carefully argued, were never acted upon. A renewed constitutional reform process, this time driven by genuine concern for rights rather than by the BJP's political agenda, would be a significant contribution to human rights protection.

10.2 The Problem of Emergency Powers

The Constitution's emergency provisions, in Articles 352, 356, and 360, are the most direct legal mechanism for constitutional breakdown. Article 352 authorizes the declaration of national emergency on grounds of war, external aggression, or armed rebellion. Article 356 authorizes President's Rule in states. Article 360 authorizes a financial emergency. These provisions have been extensively abused, as detailed in Part One.

Constitutional reforms in this area should include: requiring judicial pre-authorization for proclamations of state emergency under Article 356, rather than merely permitting judicial review after proclamation; requiring parliamentary approval within forty-eight hours rather than two months for national emergency proclamations; prohibiting the use of President's Rule as a partisan tool by requiring supermajority approval in Parliament; and limiting the duration of emergency regimes through mandatory re-authorization requirements.

Several constitutional law scholars, including M.P. Singh and V.N. Shukla, have proposed specific amendment language for these purposes. The experience of the Emergency period and the subsequent abuse of President's Rule has created broad political support, at least in opposition parties, for constitutional reform of emergency powers. But the party currently in power has shown no interest in reforms that would constrain its own use of these mechanisms.

10.3 The Problem of First Schedule and Executive Federalism

India's federal system, as designed in the Constitution, concentrates substantial power at the Centre at the expense of states. The Seventh Schedule, which divides legislative competence between the Union and the States, gives Parliament exclusive jurisdiction over a wide range of subjects and concurrent jurisdiction over many others. The residual power (jurisdiction over subjects not listed in any of the three lists) belongs to the Union rather than the States, unlike in federal systems like the United States or Australia where residual power rests with the constituent units.

The centralist tendency of the Indian federal system has been further exacerbated in practice by the abuse of Article 356, the Finance Commission's allocation formulas that favor the Centre's financial position over the states', and the use of centrally sponsored schemes that tie state expenditure to central priorities. The result is a nominally federal system that functions in many respects as a highly centralized unitary state.

From a human rights perspective, the centralism of Indian federalism matters because it allows a central government with a majoritarian agenda to override state governments that might

otherwise provide more rights-protective policies for their populations. The imposition of uniform national policies on states with very different demographic, cultural, and social characteristics, without adequate scope for state-level policy variation, reduces the possibility of rights-protective experimentation and learning that federal systems are supposed to facilitate.

Constitutional reform to genuinely federalize India's governance structure, by strengthening state autonomy, giving states greater fiscal independence, and reforming the Governor's office which is currently a tool of central government interference in state governance, would significantly improve the human rights situation for communities whose state governments are more sympathetic to their rights claims than the central government.

10.4 The Question of a Fourth-Generation Rights Framework

International human rights discourse has evolved through what scholars describe as "generations" of rights. The first generation (civil and political rights) protected individuals from state interference in their liberty and political participation. The second generation (economic, social, and cultural rights) recognized the state's positive obligations to ensure conditions of material welfare. The third generation (solidarity rights) addressed collective goods including the right to development, the right to peace, and the right to a clean environment.

Fourth-generation rights discourse, developing rapidly in the twenty-first century, is grappling with the rights implications of new technologies, new environmental challenges, and new forms of global governance. The right to digital access and digital autonomy, the right to a stable climate, the rights of future generations, the rights of artificial intelligence's victims, and the right to have one's personal data protected are examples of rights claims that are not adequately addressed by the three traditional generations.

India's Constitution, drafted in 1949, was designed for a world radically different from the twenty-first century's digital, globally interconnected, climate-threatened reality. A constitutional revision that incorporated fourth-generation rights thinking, including a right to internet access, a right to privacy and data protection without government exemption, a right to a healthy climate, and the rights of indigenous peoples as understood in contemporary international law, would bring the Constitution into alignment with the most advanced international human rights thinking and would provide better legal tools for addressing the violations described throughout this textbook.

CHAPTER ELEVEN: THE POLITICS OF IMPUNITY: WHY VIOLATIONS PERSIST AND HOW THEY COULD BE ADDRESSED

11.1 The Political Economy of Rights Violation

The persistence of human rights violations in India, despite a sophisticated constitutional framework, a formally independent judiciary, a large and educated civil society, and India's integration into the international community, requires a political economy explanation.

Violations persist not because the law fails to prohibit them (generally it does) and not because there is no institutional framework for accountability (generally there is) but because the political economy produces powerful incentives for violation and very weak consequences for those who violate.

The political economy of caste violence illustrates this clearly. Upper-caste Jat landlords who use violence against Dalit agricultural workers face virtually no consequences from the criminal justice system because the criminal justice system itself is largely under upper-caste control at the local level. Police officers who share the caste identity of the perpetrators have no incentive to investigate vigorously; indeed, their own social networks pressure them not to. Politicians who represent communities that benefit from the subordination of Dalits have no electoral incentive to press for accountability; indeed, pursuing accountability might cost them caste community votes. Prosecutors who are drawn from the same social strata face similar pressures. Judges who have no experience of Dalit life and who are socialized into professional networks that include the perpetrators' lawyers are not necessarily motivated to adjudicate with care. And Dalit victims who have no economic resources, no legal representation, and no protection against retaliation have every incentive to disengage from a process that offers no realistic prospect of justice.

The political economy of religious minority persecution under the BJP government follows a similar logic. Mob violence against Muslims by Hindu nationalist groups serves the BJP's electoral interests by mobilizing Hindu nationalist sentiment, expressing dominance over the Muslim community, and creating fear that is politically useful for maintaining Hindu bloc solidarity. The state actors who facilitate or ignore the violence are loyal to the BJP's political agenda. The absence of prosecution of perpetrators is a deliberate political choice, not an institutional failure. The consequence is a political equilibrium in which violence is instrumentally useful for the party in power and therefore persists.

The political economy analysis suggests that legal reforms, however important, are insufficient on their own to address human rights violations. What is needed is a transformation of the political economy that changes the incentive structure for state actors, so that the political costs of facilitating or ignoring violations exceed the political benefits. This transformation requires: electoral accountability mechanisms that genuinely allow affected communities to express their preferences (which requires the de-escalation of electoral intimidation and manipulation); a civil society strong enough to maintain the public salience of violations (which requires the reversal of the FCRA and UAPA assault on civil society); a media independent enough to report violations (which requires structural reform of media ownership and the rollback of regulatory harassment of independent outlets); and an international accountability system effective enough to impose reputational and economic costs on rights-violating behavior (which requires reform of the international human rights system as discussed in Chapter Nine).

11.2 The Role of Political Opposition

The capacity of India's political opposition to serve as a check on the BJP government's rights violations has been significantly reduced by a combination of factors: the fragmentation of the opposition, the use of the Enforcement Directorate and CBI to target opposition politicians on financial charges, the replacement of opposition state governments through constitutionally

dubious means, and the erosion of institutional spaces (including Parliament) in which the opposition can effectively function.

The authorities also used allegations of financial irregularities to target the BJP's political opponents. Opposition politicians and activists expressed growing concern over the lack of independence of the Election Commission. Human Rights Watch

The Election Commission of India, which is constitutionally mandated to be an independent body for the conduct of free and fair elections, has faced serious criticism for its perceived bias toward the BJP in its decision-making on issues including the Model Code of Conduct, complaints against BJP politicians, and the scheduling of elections. The independence of the Election Commission is protected by the same constitutional mechanisms as judicial independence: commissioners serve until retirement and can be removed only through the same procedure as judges. But the appointment process, which was historically controlled by the government, has been reformed by the Supreme Court to require involvement of the Leader of the Opposition, though the ultimate outcome of this reform in practice remains to be seen.

The INDIA alliance, which is the primary opposition coalition, presented a significant electoral challenge to the BJP in 2024, reducing the BJP's parliamentary majority and forcing it to govern in coalition. But the coalition's ability to translate this electoral performance into consistent pressure on the government has been limited by the divergent interests and inconsistent positions of its member parties. Some opposition-ruled states have their own problematic human rights records: the West Bengal government's treatment of the BJP's political workers has attracted criticism, as has its handling of communal tensions.

11.3 The Possibility of Internal Reform

The argument made throughout this textbook that India's human rights situation is severe, systematic, and deeply rooted does not lead to the conclusion that reform is impossible. History provides multiple examples of societies that have undergone fundamental transformations of their rights practices, including societies that were at comparable points of rights crisis. South Africa's transition from apartheid to constitutional democracy, while deeply imperfect in its implementation of social and economic rights, transformed the legal architecture from an instrument of racial domination into one of (formal) rights protection. Indonesia's democratic transition following the fall of Suharto in 1998 produced significant improvements in freedom of expression and civil society space. Brazil's democratic consolidation in the 1990s, though now seriously challenged by the Bolsonaro period and its aftermath, established an independent judiciary that for a time provided meaningful accountability.

The conditions for reform in India exist: a large and sophisticated civil society that documents violations and advocates for change; a tradition of constitutional jurisprudence that, despite its current eclipse, contains the doctrinal resources for a more rights-protective future; a political opposition that has demonstrated the capacity to mobilize and win elections; an intellectual tradition of critique, from Ambedkar through Baxi to contemporary scholars, that provides the conceptual vocabulary for transformative change; and an international community that, while

currently failing to impose meaningful pressure on India, has the institutional capacity to do so if the political will were present.

The conditions for reform are not automatically self-realizing. Ambedkar, whose pessimism about the capacity of formal constitutional rights to transform deeply unequal social relations has been vindicated repeatedly, nonetheless insisted that the struggle for rights was worth pursuing because the alternative, the abandonment of rights discourse to those who would use it selectively and instrumentally, would be even worse. This textbook, following in that tradition, documents violations not to demonstrate the futility of rights but to insist on their seriousness, to demand their realization, and to provide the intellectual tools through which that demand can be made effectively.

CHAPTER TWELVE: TOWARD A COMPREHENSIVE REFORM AGENDA: WHAT INTERNATIONAL LAW DEMANDS AND WHAT INDIA MUST DO

12.1 The Minimum Core Obligations

The concept of "minimum core obligations" in international human rights law, developed primarily by the Committee on Economic, Social and Cultural Rights in its General Comment 3 (1990), holds that states have immediate obligations to ensure the satisfaction of a minimum level of each right, regardless of resource constraints. The minimum core of the right to food requires that no one goes hungry when the state has the resources to prevent it. The minimum core of the right to health requires that emergency health services are available to everyone. The minimum core of the right to education requires that primary education is available to all.

Applied to India's situation, the minimum core framework generates very specific demands. With respect to civil and political rights, the minimum core includes: the immediate repeal of all legislation that permits detention without charge or trial for more than forty-eight hours without judicial authorization; the immediate elimination of the immunity provision in AFSPA that prevents prosecution of security personnel for killings; the immediate release of all persons detained under UAPA or PSA for longer than one year without trial; and the immediate restoration of internet access in all areas where it is currently restricted.

With respect to economic, social, and cultural rights, the minimum core includes: ensuring universal access to adequate food through the public distribution system without biometric authentication barriers; ensuring universal access to primary health care in all districts; eliminating child labor in all hazardous occupations immediately, with credible enforcement; and ensuring that all Dalit and Adivasi communities have access to the land rights guaranteed by the Forest Rights Act and the land reform legislation.

These minimum core demands are not aspirational goals for the distant future. They are immediate legal obligations that India has accepted through its treaty ratifications and that the international human rights system requires it to fulfill.

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12.2 What the UN Should Do: A Comprehensive Agenda

Despite the Modi administration's deteriorating human rights record, several countries strengthened security, economic, and trade ties with India. Human Rights Watch This reflects the fundamental structural problem in international human rights accountability: the states that have the most leverage over India's behavior (particularly the United States, the European Union states, and Japan) prioritize economic and strategic relationships over human rights concerns in their actual bilateral policies, even when their public rhetoric emphasizes human rights.

What the UN and the international community should do to address India's human rights situation can be organized around several specific demands that are grounded in the existing framework of international law and UN mechanisms.

First, the UN Human Rights Council should establish a Special Procedure specifically focused on India's overall human rights situation. While the thematic mandates cover many relevant issues, a country-specific mandate would allow for more systematic and comprehensive monitoring. The precedent of country-specific mandates for Belarus, Nicaragua, Myanmar, and other countries demonstrates that this mechanism is available and can be productive.

Second, the OHCHR should be provided with additional resources to monitor and report on the human rights situation in India, including by establishing a field presence in India (which would require India's agreement) or, failing that, a monitoring capacity from outside the country. The OHCHR's reports on Kashmir (2018 and 2019) demonstrated the value of such monitoring.

Third, the UN Security Council should address the Kashmir situation through a new resolution that acknowledges the changed situation since the 1948 resolution, reaffirms the principle of self-determination, and establishes a framework for political dialogue that includes the full spectrum of Kashmiri political opinion, including those who have been imprisoned or silenced.

Fourth, states that have bilateral leverage over India should use it in a coordinated and sustained way to press for specific reforms. The model of the EU-Turkey relationship, in which the EU has consistently linked economic engagement to human rights reforms (with mixed results), provides a template. For India, the relevant carrots include trade agreements, technology access, visa facilitation, and defense cooperation; the relevant sticks include the denial of these benefits pending demonstrated rights improvements.

Fifth, the international financial system, including the World Bank, the Asian Development Bank, and bilateral development finance institutions, should apply human rights conditionality to their lending and investment in India, specifically requiring that projects affecting Adivasi communities comply with FPIC requirements and that infrastructure projects are not implemented in ways that involve forced displacement without adequate compensation.

12.3 The Role of Indian Civil Society and the Diaspora

Despite the severe restrictions placed on civil society by the FCRA regime, the UAPA, and the overall climate of intimidation, Indian civil society has maintained a remarkable level of activity

and documentation. Organizations including the People's Union for Civil Liberties (PUCL), the People's Union for Democratic Rights (PUDR), the Lawyers Collective, the Indian Social Action Forum (INSAF), the Dalit Arthik Adhikar Andolan, the All India Muslim Personal Law Board, and dozens of state-level and sectoral organizations continue to document violations, provide legal aid, mount constitutional challenges, and maintain the institutional memory of rights struggles.

The Indian diaspora, particularly in the United Kingdom, the United States, Canada, and Australia, has become an increasingly significant actor in international advocacy on India's human rights situation. Diaspora organizations including the Coalition for Civil Society in India, the Indian American Muslim Council (IAMC), the Hindus for Human Rights, and the Sikh diaspora organizations have been particularly active in pressing the governments of their countries of residence to raise human rights concerns with India.

The IAMC 2026 Annual Report documented that throughout 2025, hundreds of lynchings, rapes, and assaults on religious minorities occurred across India, many of them carried out by members of paramilitaries belonging to the Sangh Parivar. Human Rights Watch The IAMC's consistent documentation and advocacy work, notwithstanding the Indian government's attempts to discredit it as a foreign-funded anti-India lobby, represents the kind of diaspora engagement with rights issues that has historically been important in shifting international opinion on domestic repression.

The legal mechanism of universal jurisdiction, which allows states to prosecute certain international crimes regardless of where they were committed and regardless of the nationality of the perpetrators or victims, is potentially relevant to India's most serious rights violations, including torture, enforced disappearances, and extrajudicial killings. Several European states, including Spain, Germany, and the Netherlands, have exercised universal jurisdiction in cases involving atrocities committed in other countries. The procedural and political barriers to exercising universal jurisdiction against Indian officials are significant, but the option is not foreclosed, and the threat of its exercise could have a deterrent effect even if never actualized.

CHAPTER THIRTEEN: THE PHILOSOPHICAL SYNTHESIS: SOVEREIGNTY, DIGNITY, AND THE FUTURE OF HUMAN RIGHTS IN INDIA

13.1 Sovereignty Reconsidered

The concept of state sovereignty that India invokes to resist international human rights accountability is rooted in the Westphalian conception of international order, in which each state exercises exclusive jurisdiction over its own territory and population, and no state may interfere in the internal affairs of another. This conception, formalized in the UN Charter's Article 2(7), has been the bedrock of the post-1945 international order.

But the Westphalian conception of sovereignty has been fundamentally reconsidered in the decades since the founding of the UN. The Responsibility to Protect doctrine, the development of

international criminal law through the ICC, the progressive expansion of the jurisdiction of international human rights bodies, and the emergence of customary international law norms that bind states regardless of their consent, all represent developments that qualify and complicate the sovereignty principle.

The most sophisticated philosophical articulation of this reconsidered sovereignty is found in Seyla Benhabib's work "The Rights of Others" (2004), in which she argues for a concept of "democratic iterations": the progressive reinterpretation of universal human rights norms through democratic processes at multiple levels, from the local to the global. Benhabib's framework is not simply universalist: it respects the particularity of different political communities and the importance of democratic self-governance. But it insists that self-governance cannot include the right to torture, disappear, and murder members of the governed community.

The Indian government's sovereignty argument, in its crudest form, is not a philosophical position but a political shield. It is not a consistent commitment to the principle of non-interference (as noted, India has supported international accountability mechanisms for some states while resisting them for others, based on geopolitical calculations) but an ad hoc defense of impunity. The philosophical critique of this position, from multiple traditions, is conclusive.

13.2 Human Dignity as the Foundational Value

The most powerful philosophical foundation for the human rights claims made throughout this textbook is the concept of human dignity. The concept is present across traditions: in Kant's categorical imperative, which requires treating persons always as ends in themselves and never merely as means; in the Ubuntu philosophy of Southern Africa, which holds that a person is a person through other persons, locating individual dignity in relational recognition; in Islamic philosophy's concept of karama (dignity) as an attribute of all human beings; in the Ambedkarite tradition's insistence on the equal humanity of Dalits against the caste system's fundamental denial of that humanity; in the feminist tradition's insistence on the dignity of women against the patriarchal structures that deny it.

The Indian Constitution's Preamble, which declares the resolution to secure to all citizens justice, liberty, equality, and fraternity, is an expression of this dignity commitment. The Supreme Court, in the Navtej Johar judgment on Section 377, described dignity as the "core" of the constitutional guarantee of rights. Ambedkar's entire constitutional project was grounded in the recognition that dignity had been systematically denied to Dalits and that the Constitution's task was to restore it.

The gap between the dignity commitment expressed in the Constitution's text and the dignity violations documented throughout this textbook is not merely a failure of implementation. It is a structural crisis of the relationship between formal constitutional commitment and the political and social forces that determine how law actually operates. Closing that gap requires not merely better legislation or more judicial activism but a transformation of the political culture, the social structures, and the institutional practices that produce violation.

That transformation is the work of generations. This textbook documents the violations, analyzes their sources, and argues for the reforms that would address them, not in the expectation that

change will come easily or quickly but in the conviction that understanding the situation clearly and honestly is the necessary first step toward changing it.

13.3 The Violence of Normalcy

The philosopher Slavoj Zizek, in his analysis of systemic violence in "Violence" (2008), argues that the most dangerous form of violence is not the spectacular violence of individual criminal acts but what he calls "systemic violence," the violence inherent in the normal functioning of the social and political system: the poverty that the economic system produces, the discrimination that the social system maintains, the exclusion that the political system enforces. This violence is invisible precisely because it is normal: the deaths of Dalit sanitation workers in sewers, the malnutrition of Adivasi children, the imprisonment of Muslim families in detention centers pending deportation, are not dramatic events. They are the routine operation of a system.

Zizek's analysis, applied to India, suggests that the most urgent task is to make visible what is systematically made invisible. The dramatic events, the mob lynching, the demolition drive, the mass arrest, are visible and documented. But the structural violence that underlies and enables them, the caste hierarchy that makes a Dalit's life worth less, the economic system that forces Adivasi communities into desperate choices, the communal ideology that makes a Muslim's citizenship perpetually suspect, these are invisible precisely because they are normal.

This textbook has attempted, across its analysis, to make the invisible visible: to name the structural violence for what it is, to trace its roots, to measure its costs, and to argue for the transformation that would address it. The task is not yet complete. Subsequent parts of this textbook will examine in greater depth the specific mechanisms of violation in particular domains and regions, the international comparative analysis, and the question of justice and reparation for past violations.

But the fundamental argument is already clear: the human rights crisis in India is not an aberration from a normally rights-respecting state. It is the product of deep structural features of Indian society, politics, law, and culture that have been in tension with the constitutional commitment since 1949 and that have been dramatically intensified by the Hindu nationalist project since 2014. Addressing the crisis requires addressing those structural features with the same depth and comprehensiveness with which Ambedkar addressed them in framing the Constitution: not merely reforming the surface of law but transforming the social, economic, and political relationships that law has so far failed to change.

CONCLUSION TO PART TWO: THE ARCHITECTURE OF ACCOUNTABILITY AND THE DEMANDS OF JUSTICE

Part Two has descended into the institutional machinery through which India's human rights violations are produced, maintained, and legitimized. It has examined a Supreme Court that has retreated from its constitutional mandate to be the guardian of rights, a set of new criminal laws that perpetuate and extend colonial repression under a decolonization label, an assault on press

freedom and academic liberty that is dismantling the epistemic infrastructure of democratic accountability, an epidemic of sexual violence that the legal system is structurally incapable of addressing, an economic rights crisis that reflects the systematic sacrifice of the poor and marginalized to the interests of capital and political power, a digital surveillance infrastructure that is being built without adequate legal safeguards, and an extraterritorial reach of repression that extends to assassination on foreign soil.

What unifies all of these analyses is the recognition that they are not separate problems requiring separate solutions. They are manifestations of a single underlying dynamic: the operation of a state that has, in many of its most critical institutional dimensions, become an instrument of the dominant group's interests at the expense of the rights of the subordinated groups it was constitutionally mandated to protect equally. The Hindu nationalist ideology provides the most explicit contemporary expression of this dynamic, but the dynamic predates and extends beyond the BJP's political project: it is rooted in the colonial inheritance, in the caste structure, in the class hierarchy, and in the gender order that the Constitution promised to transform but that the state has consistently failed to dismantle.

The path forward requires both immediate and structural responses. The immediate responses include the specific measures outlined in Chapter Twelve: repealing abusive laws, releasing political prisoners, allowing UN Special Procedures visits, enforcing constitutional guarantees for minority communities, and restoring the independence of institutions including the judiciary, the Election Commission, and the NHRC. These are achievable within the current constitutional framework if the political will exists.

The structural responses are harder and longer-term: the transformation of the political economy that creates incentives for violation, the rebuilding of genuine institutional independence, the democratization of access to justice, the strengthening of civil society, and the transformation of the social and cultural hierarchies that underlie legal violations. These require sustained political struggle over generations.

Part Three of this textbook will examine in depth the specific situations of India's northeastern states, the Adivasi communities in the central tribal belt, and the further dimensions of India's relationship with its South Asian neighbors. It will also engage with the comparative international analysis of states that have moved from rights crisis to rights progress and what India might learn from those transitions.

The demands of justice, which this textbook has tried to articulate in the language of jurisprudence, philosophy, and international law, are ultimately simple: that every person in India, regardless of their caste, religion, gender, ethnicity, or political opinion, be treated with the dignity that the Constitution promises and that the philosophical traditions of human rights demand. That standard has not been met. It must be.

PART THREE: INSTITUTIONS, IMPUNITY, AND THE MECHANICS OF A FAILING DEMOCRACY

A Note on Part Three

Parts One and Two of this textbook established the philosophical and theoretical frameworks through which human rights violations must be understood, traced the historical roots of those violations in colonialism and constitutional design, examined the mechanisms of repression in Kashmir and in the caste system, analyzed the architecture of Hindu nationalist politics and its consequences for religious minorities, investigated the human rights situation in the Northeast and among Adivasi communities, and began mapping India's conduct as a regional power that systematically coerces its smaller neighbors. The conclusion of Part Two began an examination of India's relationship with the international human rights system, a subject that will be developed further in Part Three.

Part Three turns to the institutional mechanisms through which the entire system of violation is sustained, defended, and reproduced. The most important of these institutions is the judiciary, which is both a potential site of resistance to executive overreach and, increasingly, a site of complicity in it. The judiciary will receive extended treatment in Chapter One, which brings together the most recent scholarship, including the International Commission of Jurists' major 2025 report, the academic literature on illiberal judiciaries, and the specific documented instances of judicial accommodation of the ruling party's political project. Chapter Two examines the destruction of press freedom and the criminalization of journalism, which is among the most visible markers of India's democratic backsliding and which directly enables other violations by eliminating the informational accountability mechanisms without which a democratic public cannot function. Chapter Three undertakes a comprehensive analysis of the paradox of electoral democracy in India, engaging with the V-Dem and Freedom House findings of 2025 and with the theoretical literature on competitive authoritarianism, electoral autocracy, and the use of elections to legitimize essentially non-democratic governance. Chapter Four examines economic rights, development-induced displacement, and the structural violence embedded in India's economic growth model. Chapter Five addresses the specific and severe forms of violation experienced by women, engaging with the feminist jurisprudential literature and with recent documented incidents from 2024 and 2025. Chapter Six takes up the contested terrain of LGBTQ rights and sexuality jurisprudence, examining how the Indian state has positioned itself in relation to the rights of sexual minorities and what the theoretical literature tells us about the relationship between sexuality, the state, and human rights. Chapter Seven returns to the international dimension, providing a comprehensive assessment of India's relationship with the treaty system, its pattern of non-cooperation with special procedures, and the structural reasons why the international human rights system has so far failed to hold India accountable.

Throughout all seven chapters, the theoretical voices that have been introduced in earlier parts, Rawls, Fineman, Galtung, Baxi, Fanon, and others, will be joined by additional interlocutors, including Lon Fuller on the inner morality of law, Robert Dahl on polyarchy and democratic theory, Kim Lane Scheppele on militant democracy, and Steven Levitsky and Lucan Way on competitive authoritarianism. The aim is to produce an analysis that is simultaneously theoretically rigorous and grounded in the specific, documented realities of people's lives.

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CHAPTER ONE: THE JUDICIARY UNDER SIEGE: INSTITUTIONAL CAPTURE, DEMOCRATIC BACKSLIDING, AND THE COLLAPSE OF THE COUNTER-MAJORITARIAN FUNCTION

1.1 The Counter-Majoritarian Function: What Courts Are For

The most powerful theoretical justification for judicial independence in a constitutional democracy is what Alexander Bickel in his 1962 work "The Least Dangerous Branch" called the counter-majoritarian difficulty. Courts, in a democratic system, are not elected by the people, do not represent any constituency, and cannot be removed for making decisions that the majority dislikes. How can such an institution be justified in a system premised on popular sovereignty? Bickel's answer, which has become one of the foundational propositions of modern constitutional theory, is that courts serve an essential function precisely because they are not democratic in the electoral sense: they protect the rights of minorities, unpopular groups, and dissidents against the tyranny of the majority. Their counter-majoritarian character is not a bug in democratic design but a necessary feature, the mechanism through which a constitutional democracy prevents its democratic processes from consuming themselves.

This theory has deep roots in political philosophy going back to the Federalist Papers, in which Alexander Hamilton described the judiciary as the "least dangerous branch" precisely because it commands neither the sword nor the purse but only judgment, and can therefore serve as a bulwark against legislative oppression. The theory received powerful expression in John Hart Ely's 1980 work "Democracy and Distrust," which argued that the primary function of constitutional adjudication is to reinforce the conditions of democratic participation: to protect the rights of political minorities, to clear the channels of political change, and to ensure that all groups have adequate representation in the political process. More recently, Kim Lane Scheppele's work on "constitutional coups" and "autocratic legalism" has established that the preservation of formal constitutional procedures while systematically hollowing out their substance is precisely the mechanism through which contemporary authoritarians maintain a facade of legitimacy while dismantling the conditions of democratic governance.

The relevance of these theories to contemporary India is direct and devastating. The Indian Supreme Court was designed to perform the counter-majoritarian function. Its founders, led by Ambedkar, understood that the formal guarantees of rights in the Constitution meant nothing without an institution capable of enforcing them against the executive and legislative branches. The writ jurisdiction under Articles 32 and 226 of the Constitution, which gives every person the right to approach the Supreme Court or High Courts directly for enforcement of fundamental rights, without first exhausting other legal remedies, was intended to make constitutional protection practically accessible. The tradition of Public Interest Litigation, developed through the 1970s and 1980s by judges like Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, extended the counter-majoritarian function to allow any public-spirited citizen to approach the court on behalf of those who could not represent their own interests.

What has happened to this institution since 2014, and particularly since the acceleration of the Hindu nationalist project from 2019 onward, is the story of Chapter One.

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1.2 The International Commission of Jurists Report: A Structural Assessment

The International Commission of Jurists (ICJ), one of the world's most authoritative bodies on judicial independence and the rule of law, published a major report in January 2025 titled "Judicial Independence in India: Tipping the Scale." The report is the most comprehensive external assessment of the Indian judiciary's independence to appear in recent years, and its findings deserve extended attention.

The ICJ report identifies what it describes as a "series of structural weaknesses in the Indian judicial system." While acknowledging that the judiciary is formally constitutionally insulated from the executive and the legislature, the report concludes that "significant scope for external, including executive influence remains." The report focuses specifically on the decade from 2014 to 2024, which it describes as witnessing "retrogressive developments" in respect of judicial independence.

The structural weaknesses identified by the ICJ include the following. First, the process for selecting and appointing judges to the Supreme Court and High Courts, known as the collegium system, is opaque and lacks the procedural safeguards necessary to resist political influence. Under the collegium system, a small group of senior judges effectively controls judicial appointments through a process that has no formal criteria, no transparent record, no public hearings, and no mechanism for accountability. While the collegium system was established precisely to prevent executive control of appointments, in practice the opacity of the process has allowed political considerations to influence recommendations in ways that are neither visible nor accountable.

Second, the transfer of judges between High Courts, which is controlled by the collegium in consultation with the executive, has been used as a mechanism of pressure and reward. Judges who have made controversial decisions, particularly on matters sensitive to the government, have been transferred to what are perceived as less prestigious courts, creating an incentive structure that discourages judicial independence. The ICJ documents specific cases in which transfers followed decisions adverse to the government or to politically connected parties, though the opacity of the process makes it impossible to prove causation in any specific instance.

Third, the absence of judicial accountability mechanisms that function independently of the government creates a situation in which judicial misconduct can be overlooked when the offending judge is politically aligned, while judges who challenge executive overreach face reputational attacks and professional consequences. The ICJ notes the controversy that erupted in January 2025 when the Lokpal, India's anti-corruption ombudsman, asserted jurisdiction to receive corruption complaints against sitting High Court judges. The Supreme Court stayed this order, describing the matter as being of great significance for judicial independence. The episode highlighted the precarious institutional position of the judiciary in relation to other branches of government.

Fourth, post-retirement employment of Supreme Court judges in government-appointed positions, including as governors, tribunal members, arbitrators in government-related disputes, and members of official commissions, creates incentive structures that may compromise judicial

decision-making in the final years of judicial service. Several judges who have ruled in favor of the government on major cases have subsequently received prestigious government appointments. The ICJ notes this pattern as one that "may, at minimum, create an appearance of partiality and compromise public confidence in the judiciary."

The ICJ report does not conclude that the Indian judiciary has been fully captured by the executive. It acknowledges that individual judges continue to make decisions adverse to the government, and that certain High Courts, particularly the Bombay, Kerala, and Madras High Courts, have shown greater independence than the Supreme Court on some issues. But the overall assessment is damning: the systemic weaknesses the report identifies are sufficient to seriously compromise the judiciary's ability to perform its counter-majoritarian function, particularly in high-stakes political cases involving the interests of the ruling party.

1.3 From Rights Court to Executive Court: The Analytical Literature

The most penetrating analysis of what has happened to the Indian Supreme Court in the Modi era comes from a body of scholarship that emerged from within Indian constitutional law circles, and that has attracted significant international attention. The analysis is most precisely stated in what has become an almost canonical formulation: the Court has shifted from being a "Rights Court" to an "Executive Court."

This formulation comes from Gautam Bhatia, who is one of the most important constitutional law scholars writing in India today. In his analysis of the Court under Chief Justice Ranjan Gogoi, who served from 2018 to 2020, Bhatia argues that the Court "drifted from a Rights Court to an Executive Court" during this period, meaning that it increasingly oriented its function around protecting executive power and facilitating government objectives rather than protecting individual rights against executive overreach. The Gogoi Court's decisions in the Article 370 case, in which the Chief Justice headed the bench that declined to stay the revocation; in the Babri Masjid case, in which the Court awarded the disputed land to the Hindu parties despite acknowledging that the mosque's demolition was illegal; and in the Rafale case, in which the Court accepted the government's national security claim and dismissed petitions challenging the fighter jet deal without examining the actual evidence, all manifest this executive orientation.

The academic literature published in 2025 adds considerable depth to this analysis. A paper published in the journal Democratization in April 2025 titled "Judicial Powerplay: Independence of Judiciary under the Shadow of Illiberalism," drawing on a comprehensive study of Supreme Court decisions between 2014 and 2024, concludes that the Supreme Court "has maintained a largely pro-government position" throughout the decade, and that "this shift has occurred without the capture of the Court, as is often the case in illiberal democracies." The paper's identification of the Indian case as involving alignment rather than formal capture is analytically important: it means that the mechanisms of judicial deference to the executive in India are subtler, more durable, and more resistant to reversal than in cases where courts are formally subordinated by explicit legislative changes.

A paper published in the journal Indian Politics and Policy in 2025, titled "What Checks and Balances? Explaining the Supreme Court's Complacency in Modi's India," traces the erosion of

judicial autonomy through a close study of each Chief Justice's tenure between 2014 and 2024. The paper identifies what it calls the "incentive structure" of the Indian judiciary as a central explanatory variable: because judges serve relatively short terms (mandatory retirement at 65 for Supreme Court justices), face significant pressure during their tenure, and look forward to post-retirement employment in government-adjacent positions, the incentive structure systematically favors accommodation of executive preferences over confrontation with them.

The paper also identifies what it calls the "political preferences" of individual judges as a factor in explaining alignment with the ruling party's agenda. This is a more sensitive claim because it attributes ideological rather than merely institutional motivations to judicial decision-making. But the evidence is substantial. The remarks of Justice M.R. Shah, who called Prime Minister Modi "a model and a hero" while serving as Chief Justice of the Patna High Court and was subsequently elevated to the Supreme Court, and who as a Supreme Court judge described Modi as "our most popular, loved, vibrant and visionary leader" at public celebrations, represent an extreme case of what the literature calls "value alignment" between the judiciary and the executive. The pattern of laudatory references to the Prime Minister by judges who subsequently receive prestigious appointments suggests that the relationship between judicial behavior and post-retirement rewards is not merely structural but partly personal.

The study published in the Taylor and Francis journal in 2025, "Sociocultural Component of India's Democratic Backsliding," provides a complementary analysis by examining how cultural factors, specifically the prevalence of what it describes as illiberal, communal, and majoritarian tendencies within Indian political culture, have facilitated the erosion of judicial independence. The argument is that the Supreme Court does not exist in a vacuum: it operates within a social and political environment in which upper-caste Hindu identity, deference to authority, and skepticism about minority rights claims are deeply embedded cultural norms. Judges who have been socialized within this environment may not need explicit pressure to produce judgments that align with Hindu nationalist preferences; their own cultural formation may lead them there.

1.4 The Pegasus Affair: Surveillance, Privacy, and Judicial Timidity

The Pegasus spyware affair represents one of the most serious institutional scandals in the recent history of Indian democracy, and the Supreme Court's handling of it illuminates, with unusual clarity, the character of the judiciary's relationship with the executive.

In July 2021, an international consortium of investigative journalists published findings from what became known as the Pegasus Project, revealing that the military-grade spyware developed by the Israeli NSO Group had been used to target the phones of thousands of individuals worldwide, including journalists, human rights activists, politicians, and government officials in multiple countries. Among those whose phones were allegedly infected or selected for targeting were several prominent Indian journalists, opposition leaders, and activists. The list included Rahul Gandhi (leader of the opposition Congress party), two ministers from the Modi government itself, and numerous journalists from major Indian media organizations.

The Supreme Court appointed a technical expert committee to investigate the allegations in October 2021. The committee's work proceeded slowly, amid allegations that the Union

government refused to cooperate with its investigation. The committee ultimately reported in August 2022 that it could not conclusively establish whether Pegasus had been used by the government, partly because it could not access the phones of the target individuals (who were reluctant to submit them given their ongoing concerns about state surveillance) and partly because it lacked access to the NSO Group's technical information.

The Supreme Court's handling of the case was widely criticized. While the appointment of the expert committee was a positive step, the Court's failure to compel government cooperation with the investigation, its failure to draw adverse inferences from the government's refusal to provide relevant information under the national security claim, and its eventual disposal of the case without any finding of government wrongdoing represented a significant failure of judicial oversight. The Court's reasoning that it could not make findings in the absence of evidence that the government refused to produce is logically circular: it allows the government to escape accountability by the simple expedient of refusing to participate in the investigation.

The human rights framework provides a clear basis for the Court's more robust engagement with the case. The right to privacy, which the Court itself had unanimously recognized in 2017 as a fundamental right under Article 21 in K.S. Puttaswamy v. Union of India, encompasses protection against surveillance by state actors. The use of military-grade spyware to monitor the communications of opposition politicians and journalists, if proven, would constitute one of the most serious possible violations of the right to privacy, as well as a direct attack on the freedom of speech and the freedom of political expression guaranteed by Article 19. The Court's failure to pursue the investigation to its logical conclusion left these violations uninvestigated and unaddressed.

Internationally, the Pegasus case has attracted sustained attention. The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye, produced a comprehensive report in 2019 on the human rights implications of surveillance technology, calling for a moratorium on its sale and transfer until adequate human rights-compatible regulations are in place. The specific use of Pegasus against Indian journalists and political figures places India in the company of authoritarian states that use surveillance technology as a tool of political repression, not of the democracies with which India presents itself as aligned.

1.5 The Article 370 Judgment: Constitutional Legitimacy and Democratic Consent

The Supreme Court's unanimous judgment in the Article 370 case, delivered in December 2023 after a delay of over four years, is the most consequential constitutional decision of the Modi era and the one that most fully illustrates the transformation of the Court into an instrument for legitimizing executive action rather than constraining it.

The legal questions in the case were genuinely difficult. The abrogation of Article 370 was accomplished through a mechanism that the government acknowledged was constitutionally novel: the President of India issued an order under Article 370(1) modifying Article 370 itself to remove its limitations, then used the resulting unlimited power to issue a second order applying the entire Indian Constitution to Jammu and Kashmir and effectively abrogating the special

status. This procedure was accomplished while Jammu and Kashmir was under President's Rule, meaning that the "concurrence" of the state that the Constitution required was given not by any democratically elected body but by a Presidential administration appointed by the Central Government itself.

Constitutional scholars across the spectrum, including those not unsympathetic to the political objective of integrating Kashmir more fully into India, widely agreed that this procedure was constitutionally questionable at best and dishonest at worst. The Solicitor General of India, appearing before the bench, was unable to point to any precedent for using President's Rule to fundamentally and permanently alter the constitutional relationship between the Union and the affected state. The procedure appeared to violate the basic principle that constitutional provisions requiring the concurrence of a state legislature cannot be circumvented by first imposing President's Rule and then claiming that the President can give that concurrence on behalf of the absent legislature.

The Court's five-judge bench, composed of Chief Justice D.Y. Chandrachud and four Associate Justices, unanimously upheld the abrogation. The reasoning was complex but in essence accepted the government's position that Article 370 was a "temporary provision" (as its heading in the Constitution describes it), that it had already been significantly eroded by previous Presidential orders, and that the government therefore had the authority to remove it entirely through the procedure it employed. The Court did not directly engage with the most serious objection, which is that the use of President's Rule to accomplish a permanent constitutional change that would otherwise require state consent is a fundamental violation of constitutional ethics, regardless of the technical legality of the procedure.

The Court's direction to restore statehood to Jammu and Kashmir, which was part of the judgment, was welcome but insufficient compensation for the constitutional enormity of what it had legitimized. Statehood was not restored until the elections of September 2024, nearly five years after the abrogation, and the new state government operates with significantly reduced powers compared to the pre-abrogation arrangement, because the bifurcation of Jammu and Kashmir into two Union territories transferred crucial powers to the Lieutenant Governor rather than to elected state authorities.

The broader constitutional significance of the Article 370 judgment is that it established the precedent that constitutional provisions specifically designed to protect the rights of specific regions or communities can be removed without the consent of those regions or communities, through creative procedural manipulation. This precedent has disturbing implications for the rights of other regions and communities whose relationships with the central government are structured through special constitutional arrangements.

1.6 Bail Denied: The Judiciary and the UAPA Accused

Perhaps the most consistently documented failure of judicial independence in contemporary India is in the treatment of persons accused under the UAPA. The Supreme Court's interpretation of the UAPA bail standard in National Investigation Agency v. Zahoor Ahmad Shah Watali in 2019 established a threshold so unfavorable to accused persons that it has functioned as an

effective denial of bail in most cases, regardless of the strength or weakness of the prosecution's case.

The logic of the Watali judgment is worth examining in detail because it illustrates the Court's approach to fundamental rights in the counter-terrorism context. Section 43D(5) of the UAPA provides that a court shall not grant bail if "there are reasonable grounds for believing that the accusation against such person is prima facie true." The Court in Watali held that this provision requires the court to take the prosecution's allegations at face value, without examining the credibility of the evidence, when deciding whether to grant bail. This means that the accusation itself, as framed in the charge sheet, essentially determines whether bail should be denied: the quality, credibility, or plausibility of the evidence adduced in support is largely irrelevant to the bail inquiry.

The consequences of this interpretation are severe. In cases like the Bhima Koregaon prosecution, the accusation in the charge sheet includes allegations of conspiracy to assassinate the Prime Minister, based on documents that digital forensics experts have demonstrated were planted by malware on the accused persons' computers. Under the Watali standard, the planted documents remain in the charge sheet, and because they are part of the charge sheet, they constitute "prima facie" grounds for refusing bail, regardless of the forensic evidence of fabrication. The accused remain in prison not because any court has examined the evidence and found it credible, but because the accusation exists and the Court's interpretation of the UAPA requires little more than an accusation to justify continued imprisonment.

The ICCPR's guarantees are clear. Article 9 provides that anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release, and that pre-trial detention shall not be the general rule. The UN Human Rights Committee's General Comment No. 35 on Article 9 states that pre-trial detention must be the exception, not the rule, and that the burden of proof should be on the prosecution to justify continued detention. The Watali interpretation inverts this burden, making release the exception and detention the rule for UAPA accused.

The plight of specific individuals under this system deserves attention beyond mere statistical citation. Father Stan Swamy, the eighty-three-year-old Jesuit priest who spent decades working for Adivasi communities in Jharkhand and who was arrested in October 2020 under the UAPA in the Bhima Koregaon case, applied for bail multiple times before the courts on medical grounds. He suffered from Parkinson's disease and other serious health conditions. Each application was denied. He died in judicial custody in July 2021, eight months after his arrest, before his trial had begun. His death represents the human cost of the judicial failure to enforce the right to bail and the right to a fair trial within a reasonable time.

Anand Teltumbde, the scholar and activist who is Ambedkar's son-in-law, was arrested in April 2020. As of the time of writing, he has spent years in pre-trial detention under the UAPA. His case has attracted significant international attention, with the UN Working Group on Arbitrary Detention finding in February 2022 that his detention was arbitrary and violated multiple articles of the ICCPR, and calling for his immediate release. India ignored this finding.

The UN Working Group on Arbitrary Detention's opinions are not legally binding on member states, but they represent authoritative interpretations of international human rights obligations by a body established by the UN Human Rights Council. India's consistent disregard for its findings in cases involving UAPA accused persons is not merely a procedural matter: it represents a fundamental rejection of the international human rights system's authority to evaluate national detention practices.

1.7 The Babri Masjid Verdict: Faith, History, and the Limits of Legal Reasoning

The Supreme Court's unanimous decision in November 2019 in M. Siddiq v. Mahant Suresh Das, the case concerning the ownership of the disputed site in Ayodhya where the Babri Masjid mosque stood until its demolition by a Hindu nationalist mob in December 1992, is among the most discussed and most criticized constitutional decisions in Indian legal history. The decision awarded the entire disputed site to the Hindu parties, to be used for the construction of a Ram temple, while directing the government to provide an alternative plot of five acres to the Sunni Waqf Board for the construction of a mosque.

The legal and moral difficulties with the judgment are numerous and have been extensively catalogued. The Court acknowledged explicitly that the demolition of the Babri Masjid in 1992 was an illegal act and that those responsible for it had violated both the law and a Supreme Court order. Having made this acknowledgment, it nonetheless awarded the disputed site to the parties whose members had committed the illegal demolition, on the grounds that title to the property had to be determined on the basis of legal evidence of prior possession and religious use, and that the Hindu parties had marginally stronger evidence of such possession and use than the Muslim parties.

The jurisprudential problem with this reasoning is not that the Court applied the wrong legal test, though that is also contestable. The problem is that the Court's reasoning produces a result in which the beneficiaries of an illegal act of destruction, carried out in defiance of a court order, receive the legal fruits of their wrongdoing: possession of the disputed site for their religious purposes. The legal principle that no one should benefit from their own wrong, ex turpi causa non oritur actio, is among the most fundamental principles of private law. The Court's reasoning appears to produce precisely this outcome: the Babri Masjid was demolished; therefore the mosque no longer occupies the site; therefore the site is available to be awarded to the Hindu parties on the basis of their prior religious use. The mosque's demolition, far from being a disqualification for the Hindu parties, effectively advanced their legal claim.

The political context of the judgment makes this conclusion even more troubling. The demolition of the Babri Masjid was carried out by organizations affiliated with the RSS and the BJP, the political formations that were in power when the judgment was delivered. The political pressure on the Court to decide in favor of the Hindu parties was substantial, open, and publicly acknowledged by commentators at the time. The unanimous decision, delivered in November 2019 just after the general elections had returned the BJP with an increased majority, was widely read as a politically accommodating gesture, regardless of the legal reasoning through which it was arrived at.

Internationally, the Babri Masjid judgment attracted concern from scholars of comparative constitutional law. Ran Hirschl, whose work on "theocracy" and the intersection of religious and constitutional law is among the most important in the field, has argued that decisions like the Babri Masjid judgment represent a form of constitutional accommodation of religious nationalism in which courts effectively endorse the dominant religion's historical claims at the expense of minority rights. This is a pattern Hirschl traces across multiple constitutional orders, including those of Israel, Pakistan, and Malaysia, and the Indian case fits squarely within his analytical framework.

1.8 Judicial Independence: Theoretical Frameworks and Indian Realities

The theoretical literature on judicial independence provides a rich set of frameworks for analyzing what has happened to the Indian judiciary. Several of these frameworks deserve particular attention.

Lon Fuller's concept of "the inner morality of law," developed in his 1964 work "The Morality of Law," holds that law has eight formal requirements that must be met for it to function as law at all: it must be general, publicly known, prospective, clear, non-contradictory, possible to comply with, stable, and administered in accordance with its stated rules. Fuller argues that a legal system that systematically fails these requirements is not a degraded version of law but something other than law, a system of social control masquerading as legal order. The Indian legal system, as operated in the UAPA context, fails several of these requirements: the UAPA's broad definitions of "unlawful activity" and "terrorist act" are insufficiently clear, the bail standard established in Watali is administered in a manner inconsistent with its stated purpose (which is to prevent genuine terrorist threats from securing bail, not to prevent legitimate dissent from being heard), and the use of the law against persons who are not terrorists but are accused of terrorism violates the requirement that law be possible to comply with, because there is no way for a political activist or human rights defender to know in advance what advocacy might constitute "unlawful activity" under an expansively interpreted UAPA.

Robert Dahl's classic 1956 analysis "A Preface to Democratic Theory" makes an argument about the relationship between the Supreme Court and majority politics in the United States that has a disturbing resonance when applied to India. Dahl's argument is empirical: studying the history of the US Supreme Court, he found that the Court rarely if ever sets itself against the major legislative achievements of a determined legislative majority for any extended period. Over time, the Court comes into alignment with the dominant political coalition, partly through the appointment process and partly through the incentive structure of judicial behavior. Dahl's analysis, though focused on the American context, maps with uncomfortable precision onto the Indian situation: the Indian Supreme Court, like its American counterpart in Dahl's analysis, has generally managed not to stand fundamentally in the way of the major legislative and political projects of a determined majority government, particularly when it commands the appointment process.

Steven Levitsky and Lucan Way's influential 2002 article "The Rise of Competitive Authoritarianism," which was developed into their 2010 book "Competitive Authoritarianism: Hybrid Regimes After the Cold War," provides the most apt theoretical framework for

understanding what is happening to Indian democracy and its institutions. Levitsky and Way define competitive authoritarianism as a regime type in which "formal democratic institutions are widely viewed as the primary means of obtaining and exercising political authority, but incumbents violate those rules so often and to such an extent that the regime fails to meet conventional minimum standards for democracy." The key distinguishing feature is that elections are held and are meaningful, but the playing field is tilted systematically in favor of the incumbent through the use of state resources, harassment of the opposition, manipulation of the media environment, and the subordination of independent institutions including the judiciary.

India's current situation corresponds closely to Levitsky and Way's model. Elections are held, they matter, opposition parties have electoral prospects, and in the 2024 general election the BJP lost its outright majority. But the playing field is not level: the opposition faces harassment through investigative agencies, opposition leaders face prosecution on financial charges, electoral bonds have created a system of opaque funding that heavily favors the ruling party, and the media environment has been captured to a degree that makes neutral information about the government's performance difficult to obtain through mainstream channels. The judiciary, in Levitsky and Way's model, is one of the key institutions whose subordination or alignment is necessary for competitive authoritarian regimes to function. The evidence reviewed in this chapter suggests that this alignment has advanced substantially in India's case.

CHAPTER TWO: PRESS FREEDOM, MEDIA CAPTURE, AND THE CRIMINALIZATION OF JOURNALISM

2.1 The Constitutional Framework and the Reality of Press Freedom

Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression. The Supreme Court has consistently held that press freedom is an essential component of this right, and that a free press is indispensable to democratic governance. In Romesh Thapar v. State of Madras decided in 1950, one of the earliest constitutional decisions, the Court held that freedom of speech and press lays at the foundation of all democratic organizations. The logical connection between press freedom and democratic governance has been elaborated in numerous subsequent decisions.

The international framework reinforces this strongly. Article 19 of the ICCPR protects freedom of expression in terms that specifically include the freedom to seek, receive, and impart information and ideas of all kinds. The UN Human Rights Committee's General Comment No. 34 on Article 19, issued in 2011, specifically identifies press freedom as protected by the article, and states that states parties must take account of the extent to which their domestic laws permit the government to use criminal proceedings to silence journalists and constrain reporting. The General Comment notes that the criminalization of the "publication of information concerning alleged corruption involving public figures" is an area in which criminal law provisions are inappropriately applied.

The gap between these formal guarantees and the reality of press freedom in India is as wide as in almost any other constitutional domain. India's position on global press freedom indices has collapsed under the Modi government. In 2002, India ranked 80th on Reporters Without Borders' World Press Freedom Index. By 2023, it had fallen to 161st out of 180 countries, placing it below Pakistan (150th) and just above China and a handful of the world's most repressive regimes. The 2025 RSF World Press Freedom Index marked some marginal improvement in ranking, but RSF's qualitative assessment remained deeply concerned, with the organization describing India as a "difficult" environment for journalism characterized by physical violence against journalists, criminal prosecutions, and the systematic use of legal instruments to silence critical reporting.

2.2 The Legal Instruments of Press Suppression

The arsenal of legal instruments available to the Indian state and to politically aligned private parties to suppress critical journalism is extensive and has been expanded significantly under the Modi government.

The UAPA, whose operation against human rights defenders and academics has been examined in previous chapters, is also used against journalists, particularly those reporting from Kashmir. Irfan Mehraj, the journalist and editor-in-chief of Wande Magazine in Kashmir, was arrested in March 2023 under the UAPA on terrorism-related charges. As of March 2026, he had been in pre-trial detention for three years, under the same Watali bail standard that has been examined in the previous chapter. The Committee to Protect Journalists has consistently called for his release, describing his detention as politically motivated journalism that the Indian state has labeled as terrorism. RSF marked the third anniversary of his pre-trial detention in March 2026 with a public call for his immediate release.

The Enforcement Directorate, the financial crimes investigation agency, has been used as a parallel mechanism of press suppression. In February 2023, the ED and the Income Tax Department conducted simultaneous raids on BBC offices in New Delhi and Mumbai, two days after the BBC aired a documentary critical of Prime Minister Modi's record during the 2002 Gujarat riots. The timing was clearly retaliatory: the documentary had been blocked by the government in India but was available internationally, and the raids were widely interpreted as a message to other media organizations about the consequences of critical coverage of the Prime Minister. The raids themselves produced no charges and no prosecution, which is consistent with the pattern of using investigation and harassment as a deterrent rather than pursuing genuine legal action.

NewsClick, a digital news platform known for its coverage of labor rights, Dalit issues, and government policy failures, was subjected to a massive raid by the Delhi Police in October 2023, in which dozens of journalists, contributors, and staff members had their phones and computers seized and were detained for questioning. The editor-in-chief, Prabir Purkayastha, was arrested under the UAPA on charges of receiving foreign funding for anti-India propaganda. The Supreme Court later held that his arrest was illegal for procedural reasons and ordered his release. But the fundamental use of the UAPA as an instrument to silence a critical media

organization, combined with the disruption of its operations during a period of extended police action, illustrates the mechanism of press suppression in action.

The sedition law, though technically suspended by the Supreme Court in 2022 pending review, has been replaced by provisions in the new Bharatiya Nyaya Sanhita that create comparable restrictions under different statutory language. Section 152 of the BNS, which criminalizes acts that "excite or attempt to excite secessionism, armed rebellion or subversive activities, or feelings of separatist activities or that endanger the sovereignty or unity and integrity of India," is sufficiently broad to encompass much of the critical journalism that was previously suppressed through the sedition law.

The Information Technology Act, particularly its provision allowing the government to block online content on broad grounds of public order, national security, or sovereignty, has been used extensively to suppress journalistic content. Between October 2024 and September 2025, government agencies issued over three hundred requests for online content removal, according to data obtained under the Right to Information Act. In the aftermath of the Pahalgam attack of April 2025 and the subsequent India-Pakistan military conflict in May 2025, internet censorship escalated dramatically: the Freedom House report on Internet Freedom in India 2025 documented extensive website blocking, the ordering of content removal, and the arrest of individuals for online commentary about the conflict and its causes.

2.3 The Murder of Journalists and the Culture of Impunity

Two journalists were murdered in the first quarter of 2025. Mukesh Chandrakar, a journalist from Chhattisgarh who had been reporting on corruption and illegal mining in the Bastar region, was murdered in January 2025. His body was found concealed in a septic tank on a property connected to a contractor he had been investigating. Raghvendra Bajpai, a journalist from Uttar Pradesh, was murdered in March 2025. Both murders appear to have been motivated by their investigative reporting on local corruption networks that involved politically connected figures.

The murders of journalists in India have a grim history. Gauri Lankesh, a prominent left-wing journalist and activist, was shot dead outside her home in Bengaluru in September 2017. Shujaat Bukhari, editor of the Rising Kashmir newspaper, was shot dead in Srinagar in June 2018. The investigation into the Lankesh murder eventually identified members of a Hindutva organization as suspects, raising deeply troubling questions about whether the violence against critical journalists is organized rather than opportunistic.

The CPJ's Impunity Index measures the proportion of journalist murders that go unsolved. India's ranking on this index has been consistently poor: the impunity rate for journalist murders in India is high, meaning that those responsible for killing journalists rarely face criminal consequences. The combination of violence, legal harassment, and surveillance creates what press freedom organizations describe as an "ecosystem of fear" in which self-censorship becomes rational for journalists who wish to continue their work and their lives without state harassment or the risk of physical violence.

The Clooney Foundation for Justice, together with National Law University Delhi and Columbia Law School, published in 2023 an analysis of 423 criminal cases against journalists from 2012 to 2022, finding that in at least forty percent of the cases the journalist was arrested, that in ninety percent of cases multiple offenses were charged, and that only sixteen cases, representing six percent of the total, resulted in a concluded trial. The pattern of arrest without trial, of multiple charges designed to maximize legal harassment without the risk of acquittal, is precisely what press freedom organizations mean when they describe India's legal system as having been weaponized against journalism.

2.4 The Digital Surveillance Architecture and Its Implications

The right to privacy, recognized as a fundamental right in the Puttaswamy judgment of 2017, encompasses protection against digital surveillance by the state. The Personal Data Protection Act, which was enacted in 2023 and came into force in stages, was intended to provide a regulatory framework for data privacy. But critics have noted that the Act contains extensive exemptions for government surveillance, allowing central and state governments to exempt any agency from the Act's requirements on national security grounds, and creating a system in which surveillance for government purposes is governed by the very authority whose surveillance is being regulated, which is no governance at all.

The Pegasus affair, examined in the previous chapter, is the most dramatic illustration of the surveillance threat. But the surveillance infrastructure goes far beyond Pegasus. India has built one of the world's most extensive state surveillance systems, including the Central Monitoring System (CMS) which provides real-time access to phone calls and digital communications; the National Intelligence Grid (NATGRID), which links multiple government databases to create a comprehensive monitoring network; and a growing facial recognition infrastructure that is being deployed in airports, railway stations, and public spaces across the country.

These systems operate without adequate legal authorization (the CMS, for example, functions under executive orders rather than legislation), without independent oversight, without transparency about who is being surveilled and on what grounds, and without any effective remedy for those whose communications are unlawfully monitored. The surveillance architecture directly threatens press freedom because it eliminates the confidentiality of journalistic sources, which is recognized in international standards as essential to the functioning of investigative journalism. A journalist who knows that their digital communications are potentially monitored by the state cannot credibly protect the identity of whistleblowers, informants, or other confidential sources.

The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has, in multiple reports, identified the mass surveillance architecture of states as a threat to freedom of expression and journalism, calling for states to establish a clear legal basis for surveillance with adequate oversight, to limit surveillance to necessity and proportionality requirements, and to provide effective remedies for those whose communications are unlawfully monitored. India meets none of these requirements in its current surveillance framework.

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2.5 Media Ownership Concentration and the Capture of the News Ecosystem

Beyond legal harassment and surveillance, the structural transformation of India's media ecosystem represents a fundamental threat to press freedom that operates through market mechanisms rather than through state coercion, though the market mechanisms are themselves shaped by state decisions about regulatory enforcement and favor distribution.

The ownership of major Indian media organizations has become increasingly concentrated in the hands of conglomerates with significant interests in areas requiring government approval, including infrastructure, telecommunications, banking, and natural resources. This creates structural conflicts of interest: media organizations whose owner-groups depend on government licenses, contracts, and regulatory forbearance have powerful financial incentives to avoid reporting that might antagonize the government. Editors and journalists who understand these incentives practice self-censorship not necessarily because they receive direct instructions from owners but because they correctly understand the institutional interests they serve.

The most significant recent example is the acquisition of NDTV, historically one of India's most prominent independent television news channels, by the Adani Group, the industrial conglomerate headed by Gautam Adani, who is India's wealthiest person and has an extremely close relationship with Prime Minister Modi. The acquisition was completed in 2023 after a complex takeover process that involved regulatory decisions favorable to Adani and raised questions about whether the government facilitated the acquisition. NDTV's editorial line subsequently moderated noticeably in relation to government policy, according to documented analyses of its coverage before and after the ownership change.

The Journalist Support Group published a report in 2025 documenting the systematic shift in television news content in India, finding that coverage of government-critical stories, minority community rights, and human rights violations has declined significantly across major news channels since 2019, while coverage aligned with government narratives has increased. The report attributes this shift partly to owner pressure, partly to self-censorship by editors and journalists, and partly to the government's strategic distribution of advertising revenue to organizations that provide favorable coverage and withdrawal of advertising from those that do not.

This pattern of "soft" media control, operating through market mechanisms rather than overt censorship, is particularly resistant to legal challenge and particularly difficult to document, because it operates through the aggregation of individual decisions rather than through any single identifiable act of censorship. But its effects on the informational environment available to Indian citizens are profound and have been identified by V-Dem as one of the most significant markers of India's democratic backsliding.

2.6 The Student Press and Campus Censorship

The suppression of student journalism and campus activism is a particular dimension of India's press freedom crisis that deserves separate attention. Universities have traditionally been spaces of intellectual freedom, debate, and political dissent. Under the Modi government, this tradition

has been systematically attacked through multiple mechanisms: the appointment of politically aligned vice-chancellors who discipline students and faculty for political expression, the use of university regulations to ban student organizations and events, the filing of criminal cases against students for speech acts, and the investigation of student publications for alleged violations of digital speech norms.

The expulsion and subsequent suicide of Rohith Vemula at Hyderabad Central University in January 2016, discussed in the context of Dalit rights in Part Two, remains the most devastating symbol of the violence that institutional discrimination can inflict on dissenting voices on university campuses. But the pattern of campus suppression has continued and intensified. Students who led protests against the Citizenship Amendment Act in 2019 and 2020 at Jawaharlal Nehru University, Jamia Millia Islamia, and other universities were subjected to physical attacks in which police stood by without intervening, and subsequently prosecuted under UAPA provisions on charges of participation in a "larger conspiracy" against the state.

The Freedom in the World 2026 report documents continued repression of student expression and activism in the academic year 2025-2026. The pattern is not limited to explicitly political speech: students who have reported on local administration corruption, on university management failures, and on civil society issues have faced intimidation, disciplinary proceedings, and in some cases criminal charges. The chilling effect of these measures on student journalism and intellectual culture is substantial.

CHAPTER THREE: ELECTORAL DEMOCRACY AND ITS DISCONTENTS: COMPETITIVE AUTHORITARIANISM AND THE PARADOX OF PARTICIPATION

3.1 The Global Indices and What They Reveal

The reclassification of India's political system by multiple authoritative global democracy indices represents a significant development in the understanding of what kind of political entity India has become under a decade of BJP governance. The implications of these reclassifications go beyond academic categorization: they reflect a substantive assessment of whether the conditions necessary for meaningful democratic self-governance are present.

The V-Dem Institute's Democracy Report for 2025 classifies India as an "electoral autocracy," placing it at number 100 out of 179 countries on its Liberal Democracy Index. This classification means that while India holds elections, the conditions necessary for those elections to translate popular preferences into governance are substantially absent: civil society is repressed, the media is captured, the playing field is tilted, and institutional checks on executive power have been systematically weakened. The V-Dem report specifically identifies India as among the worst offenders in two critical dimensions: government censorship of the media, where India is listed alongside Afghanistan, El Salvador, and Myanmar as having experienced the most substantial increases in media censorship over the past decade; and repression of civil society, where India appears alongside Belarus, Peru, the Philippines, and Tunisia as among the countries where civil society organizations have come under the most severe attack.

The V-Dem Institute has noted that India's Liberal Democracy Index score has declined by twenty-three percentage points over the past decade, which it describes as one of the most dramatic shifts among all countries in the world. The decline of twenty-three points on a zero-to-one scale represents a transformation of India's democratic character that is not a matter of marginal deterioration but of fundamental change in the kind of political system India represents.

Freedom House's Freedom in the World 2026 report maintains India's classification as "Partly Free" with a score of 66 out of 100 points. The report notes particular concerns about the continuing suppression of civil society, the targeting of journalists and activists through criminal law, the discriminatory treatment of religious minorities, and the use of administrative mechanisms to pursue political opponents. The European Union's "New Strategic EU-India Agenda" unveiled in September 2025, which describes India as the "world's largest democracy" and a "like-minded and trusted partner" while acknowledging none of these concerns, is identified in the HRW 2026 World Report as a deliberate decision to overlook India's deepening human rights crisis for strategic reasons.

The Economist Intelligence Unit's Democracy Index places India in the "flawed democracy" category. The EIU's assessment notes positive elements including the holding of competitive elections and the functioning of some institutional checks, but identifies significant deficiencies in civil liberties, political culture, and the functioning of government that prevent India from qualifying as a "full democracy."

3.2 Electoral Integrity and the Tilted Playing Field

The conduct of elections in India is complex and not susceptible to simple characterization. India does hold elections, those elections do matter, opposition parties do compete and sometimes win, and the 2024 general election in which the BJP lost its outright majority and was forced into coalition governance demonstrates that the electoral system retains meaningful competitive features. But a closer examination of the conditions under which elections are conducted reveals a playing field systematically tilted in favor of the incumbent.

The electoral bond scheme, which allowed corporations to make unlimited anonymous donations to political parties through the purchase of bonds from a government bank, was operative from 2018 to February 2024, when the Supreme Court declared it unconstitutional in Association for Democratic Reforms v. Union of India. The scheme created conditions in which massive and anonymous corporate money could flow to political parties, with the additional feature that the purchasers' identities were known to the State Bank of India and therefore potentially accessible to the government, creating perverse incentives for corporations facing regulatory action or seeking government approvals to purchase bonds and donate to the ruling party. The BJP received the overwhelming majority of electoral bond funds during the period of the scheme's operation.

The Election Commission of India, which is supposed to function as an independent constitutional body ensuring the fairness of elections, has been the subject of sustained criticism for what critics describe as its accommodation of the ruling party's interests. The Supreme Court in Anoop Baranwal v. Union of India decided in March 2023 held that the Prime Minister, the

Leader of the Opposition, and the Chief Justice of India should constitute the committee selecting members of the Election Commission, rather than leaving the selection entirely to the executive as had previously been the practice. The government responded in 2023 by enacting legislation that replaced the Chief Justice with a Cabinet Minister in the selection committee, ensuring that the selection would be controlled by two members allied with the executive and only one from outside it.

The use of investigative agencies, primarily the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED), against opposition politicians is a documented feature of the BJP era. Multiple prominent opposition leaders have faced CBI or ED investigation and prosecution on corruption or financial charges, with the timing and intensity of investigations appearing to bear some relationship to their political activities and to their proximity to BJP interests. The Supreme Court has occasionally expressed concern about the selective use of investigative agencies, but has not developed a doctrine that effectively constrains politically motivated investigation.

3.3 The Theoretical Framework: Competitive Authoritarianism and Democratic Resilience

Levitsky and Way's theory of competitive authoritarianism, applied to India, provides a framework for understanding what kind of political system India has become, while also helping to explain why it has not become a full autocracy. Competitive authoritarian regimes, in their account, maintain electoral competition because elections provide legitimacy and because the costs of transitioning to full authoritarianism are high: a clearly rigged election would provoke international isolation and domestic resistance that the regime's constituency might not support. But the playing field is systematically tilted to make it very unlikely, under normal circumstances, that the opposition can win.

The 2024 election, in which the BJP despite massive structural advantages managed only to form a coalition government rather than winning the outright majority it expected, creates some complexity for the competitive authoritarian model. Levitsky and Way acknowledge that competitive authoritarian regimes can experience setbacks, and that the tilted playing field does not guarantee the incumbent's victory: it only makes the incumbent's victory more likely than in a genuinely level competitive environment.

Lucan Way, in his 2020 book "Pluralism by Default: Weak Autocrats and the Rise of Competitive Politics," offers a complementary analysis that helps explain India's case. Way argues that many competitive authoritarian regimes are characterized not so much by the incumbent's deliberate construction of tilted conditions as by the "weakness" of the would-be autocrat, meaning the inability to fully eliminate autonomous power centers due to resource constraints, elite fragmentation, or historical institutionalization of independent institutions. The BJP's failure to fully subordinate the Supreme Court, to fully capture the Election Commission, or to fully eliminate opposition electoral prospects may reflect not the success of democratic resistance but the limits of the ruling party's organizational capacity and the depth of India's institutional inheritance.

Milan Vaishnav and colleagues at the Carnegie Endowment for International Peace have developed an analysis of Indian democracy that emphasizes the persistence of what they call "competitive federalism" as a democratic resilience factor: the existence of multiple state governments controlled by opposition parties, which maintain autonomous power centers that constrain the central government's authoritarian ambitions and provide platforms for opposition political activity that the central government cannot simply eliminate. The continued competitive governance in states like Tamil Nadu, Telangana, Himachal Pradesh, and Karnataka provides some measure of institutional pluralism that partially offsets the centralizing and homogenizing tendencies of the BJP central government.

3.4 Electoral Politics and Minority Mobilization: The Instrumentalization of Fear

The political strategy through which the BJP and its associated organizations have mobilized electoral support is not merely a matter of delivering development policy or appealing to Hindu cultural pride in a pluralistic sense. The strategy has relied heavily on what social scientists studying ethnic and religious conflict describe as "outbidding": the competitive escalation of anti-minority rhetoric and policy to signal credibility to the core constituency and to mobilize voters on the basis of communal identity rather than policy performance.

Political scientist Christophe Jaffrelot, one of the world's leading scholars of Hindu nationalism, has documented in his work "Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy" published in 2021 the way in which BJP electoral campaigns have systematically deployed anti-Muslim rhetoric, from the "anti-national" label applied to Muslim students who protest government policy, to the "infiltrator" framing applied to Muslim refugees, to the electoral promise to "clean up" Muslim-majority localities by applying building regulations that are not applied elsewhere. Jaffrelot's concept of "ethnic democracy" is particularly important: he defines it as a regime in which the political system is formally democratic but in which the dominant ethnic or religious group systematically uses democratic institutions and majoritarian politics to maintain its supremacy and to subordinate minority groups.

The specific election campaigns in BJP-governed states in 2024 and 2025 reflect the continuation of this strategy. The Uttar Pradesh Chief Minister Yogi Adityanath, who has made anti-Muslim rhetoric a centerpiece of his political identity, using terms like "mafiadom" (heavily associated in media reporting with Muslim criminal networks), campaigned on explicit Hindutva themes throughout the period. The Madhya Pradesh elections and subsequent gubernatorial appointments in 2024 and 2025 continued the pattern of appointing administrators and politicians who have expressed explicitly communal views to positions of authority.

Arendt's analysis of totalitarianism, particularly her observation that the mobilization of populations through fear and the construction of an enemy against whom the community must be protected is a technique of political control that has been used across many political systems, provides a theoretical lens through which the BJP's political strategy can be understood at a deeper level. The specific enemy in the BJP case is the Indian Muslim, whom the party's rhetoric portrays as a demographic threat (the "population jihad" conspiracy theory, which alleges that Muslims are deliberately producing large numbers of children to eventually outnumber Hindus), a security threat (the "terrorist" label applied to Muslim political dissent), and a cultural threat

(the "love jihad" conspiracy theory, alleging that Muslim men seduce Hindu women with the intent of converting them). Each of these threat narratives serves to mobilize Hindu voters on the basis of fear, bypassing policy evaluation and creating a political environment in which being seen as "tough" on Muslims substitutes for governance competence.

The human rights consequences of this strategy are not merely incidental byproducts. They are, in a disturbing sense, features: the violence against Muslims that follows elections in BJP-governed states, the administrative harassment of Muslim communities, the selective enforcement of laws against Muslim practices, all serve to demonstrate to the Hindu nationalist constituency that the BJP delivers on its communal promises. The human rights violations are the evidence of political performance.

3.5 The 2025-2026 Landscape: Elections, Tensions, and the Pattern of Escalation

The period from late 2024 through early 2026 has been marked by state assembly elections in several crucial states, by the India-Pakistan military conflict of May 2025, and by the continuing escalation of communal tensions in the aftermath of the Pahalgam attack. The pattern of political escalation that this combination has produced is precisely what Levitsky and Way's model predicts: competitive authoritarian incumbents facing electoral competition respond by intensifying the communal mobilization that generates their political advantage.

The India Persecution Tracker Annual Report for 2025, published in January 2026 by the South Asia Justice Campaign, noted that as India enters 2026 "its persecution of religious minorities shocks as much by its routinization as by its scale and cruelty, having become, as observers have been warning, a dangerous new normal." The report's observation that "with elections looming in multiple crucial states, amid deepening economic distress and waning international credibility, the incentives for further polarization and the risks for minorities appear to be escalating" reflects the structural logic of competitive authoritarianism: the more the political situation is difficult for the incumbent, the greater the incentive to escalate communal mobilization as a substitute for policy performance.

CHAPTER FOUR: ECONOMIC RIGHTS, DEVELOPMENT-INDUCED DISPLACEMENT, AND THE VIOLENCE OF PROGRESS

4.1 Economic Rights in International Law and Indian Constitutional Framework

The ICESCR, to which India is a party, establishes a comprehensive framework of economic, social, and cultural rights. States parties undertake to take steps "to the maximum of available resources" with a view to achieving progressively the full realization of the rights recognized in the Covenant. Article 6 protects the right to work. Article 7 guarantees the right to just and favorable conditions of work. Article 9 guarantees the right to social security. Article 11 recognizes the right of everyone to an adequate standard of living, including adequate food, clothing, and housing. Article 12 recognizes the right to the enjoyment of the highest attainable standard of physical and mental health.

These rights are not merely aspirational. The Committee on Economic, Social and Cultural Rights, which monitors state compliance with the ICESCR, has developed through its General Comments a sophisticated doctrine of state obligations under the Covenant. The obligation to take steps to the maximum of available resources has been interpreted to include an obligation of non-retrogression: states cannot take deliberate steps backward in the realization of economic, social, and cultural rights. The obligation has been interpreted to include a "minimum core" content: there are certain irreducible minimum levels of each right, such as minimum essential levels of food, primary health care, and basic shelter, that states must ensure regardless of resource constraints. And the obligation includes a requirement of non-discrimination: rights must be realized without discrimination on any ground, including the grounds of race, religion, caste, and sex that are most relevant to India's situation.

The Indian constitutional framework is somewhat different from the ICESCR framework because most economic and social rights in the Indian Constitution are in the Directive Principles of State Policy (Part IV) rather than in the Fundamental Rights (Part III). The DPSP are constitutionally mandated as being "fundamental in the governance of the country" and as placing a duty on the state to apply these principles in making laws, but they are explicitly made non-justiciable. However, as noted in previous chapters, the Supreme Court has read many economic and social rights into Article 21's right to life, creating a judicially enforceable framework of economic rights that supplements the non-justiciable DPSP.

4.2 The Paradox of Growth and Deprivation

India has experienced remarkable economic growth since the liberalization reforms of 1991. Between 1991 and 2024, India's GDP grew from approximately $330 billion to over $3.7 trillion. India is now the world's fifth largest economy, and on some measures the third largest in purchasing power parity terms. This economic growth has lifted hundreds of millions of people out of extreme poverty as defined by the World Bank's extreme poverty line of $2.15 per day.

But the distribution of the fruits of this growth has been extraordinarily unequal, and the mechanisms through which growth has been generated have produced severe human rights violations for specific communities, particularly Adivasi communities whose lands and forests have been seized for industrial projects, agricultural laborers who have been dispossessed by agricultural commercialization, urban slum dwellers whose settlements have been demolished for urban development, and workers in the informal economy whose rights have been progressively undermined by the rollback of labor protections.

The Oxfam India Wealth Report of 2024, referenced in Part One, documented that the top one percent of the Indian population holds over forty percent of national wealth. The eight richest Indians hold more wealth than the bottom 50 percent of the population combined, representing approximately seven hundred million people. The contrast between the conspicuous luxury of India's billionaire class, whose yachts, jets, and mega-mansions are featured in both domestic and international media, and the conditions of daily life for the hundreds of millions of Indians living in poverty, without secure access to food, water, shelter, healthcare, or education, represents one of the most extreme disparities of wealth and deprivation in the world.

This inequality is not merely an economic phenomenon. It is a human rights phenomenon. Amartya Sen, whose work on "Development as Freedom" published in 1999 provides one of the most powerful frameworks for understanding the relationship between economic conditions and human rights, argues that development is properly understood not as GDP growth but as the expansion of substantive freedoms: the capabilities that people have to lead lives they have reason to value. On this measure, the development of India's economy has been accompanied by the failure to expand the substantive freedoms of a very large proportion of the population. Malnutrition, illiteracy, morbidity, early mortality, lack of economic security, and vulnerability to violence are not merely unfortunate byproducts of economic development: they are failures of development understood as the expansion of human freedom and capability.

Martha Nussbaum's capabilities approach, developed in collaboration with Sen and articulated in her own work "Creating Capabilities" published in 2011, provides a specific list of central human capabilities that a just state must cultivate for all its citizens: life, bodily health, bodily integrity, senses, imagination and thought, emotions, practical reason, affiliation, other species, play, and control over one's political and material environment. A mapping of these capabilities against the conditions of life for Dalit agricultural laborers, Adivasi forest communities, Muslim minorities in BJP-governed states, or Kashmiri civilians shows systematic deficits in nearly every capability. This is not a marginal human rights concern: it is a comprehensive failure of the state to fulfill its basic obligation to ensure that all its citizens can live lives worthy of human dignity.

4.3 The Forest Rights Act and Its Systematic Subversion

The Forest Rights Act of 2006 was the most significant legislation protecting Adivasi economic rights in the post-independence period, and its systematic subversion by the same political formation that rhetorically champions "tribal welfare" represents one of the clearest examples of the gap between formal law and political reality in contemporary India.

The Forest Rights Act recognizes two categories of rights. Individual forest rights recognize the rights of Scheduled Tribe members and other traditional forest dwellers to cultivate land they have actually been cultivating before December 13, 2005. Community forest rights recognize the rights of communities to use, manage, and protect the forest areas they have traditionally used for grazing, collecting non-timber forest products, and other purposes. The Act also provides that no forest land can be diverted for non-forest purposes, including mining, infrastructure projects, or industrial development, without the free, prior, and informed consent of the gram sabha (village assembly) of the affected community.

In theory, this consent requirement gives Adivasi communities a powerful veto over the use of their ancestral lands and forests for industrial development. In practice, the consent requirement has been systematically circumvented through multiple mechanisms: the manipulation of gram sabha meetings to produce pro-development resolutions that do not reflect the actual views of the community; the exclusion of women and minority factions from gram sabha meetings; the holding of gram sabha meetings without adequate notice; the coercion of community members by officials, project developers, and their associates; and in some cases the outright fabrication of consent resolutions.

The Supreme Court's 2019 order, which arose from a petition asking the Court to direct the eviction of millions of Adivasi families whose claims under the Forest Rights Act had been rejected, illustrated the precarious situation of Adivasi forest communities. The order, which was later stayed, would have required the eviction of millions of people from land they had occupied for generations, on the basis that their claims under the Forest Rights Act had been rejected through a process that was itself deeply flawed. The Central Government's response to the order was initially tardy and inadequate, and the underlying problem of systematic rejection of valid claims under the Act was not resolved by the stay.

The HRW 2026 World Report documents that counterinsurgency operations in central India, while targeting Maoist combatants, have displaced Adivasi communities from their villages and lands in Chhattisgarh. The report notes that security forces claimed to have killed 460 alleged Maoists since January 2024, while civil society groups alleged widespread abuses against Adivasi villagers, including extrajudicial killings and the displacement of communities from ancestral lands. The pattern of using counterinsurgency operations to facilitate the displacement of Adivasi communities from resource-rich areas, a pattern that has been documented by the People's Union for Civil Liberties and many other organizations over decades, reflects the intersection of security policy and economic interests in ways that systematically harm Adivasi rights.

4.4 Labor Rights and the Erosion of Worker Protections

The consolidation of India's labor laws into four Labor Codes between 2019 and 2020, which was presented by the government as a progressive rationalization of a complex and outdated regulatory framework, has been extensively criticized by labor scholars, trade unions, and international labor organizations as a systematic weakening of worker protections.

The four codes cover wages, industrial relations, social security, and occupational safety. The criticisms are numerous and overlapping. The Industrial Relations Code significantly raised the threshold above which employers need government permission before retracting workers, from 100 to 300 employees in establishments in certain categories, effectively exempting a larger proportion of employers from mandatory retention requirements. The definition of "worker" in the codes is narrowed in ways that could exclude significant categories of workers from protection. The provisions for fixed-term employment, which the codes facilitate, allow employers to engage workers on terms that deny them the security of permanent employment while formally complying with minimum wage and other requirements.

The most serious labor rights violations in India occur not in the formal sector governed by these codes but in the informal sector, which employs over ninety percent of India's working population. Bonded labor, which is prohibited by the Bonded Labour System (Abolition) Act of 1976 but persists extensively across multiple states, is a form of labor slavery: workers are bound to employers through debt, often hereditary debt, and face violence and coercion if they attempt to leave. The National Human Rights Commission has documented thousands of bonded labor cases, but the actual scale of the practice is known to be far larger. The workers most vulnerable to bonded labor are Dalits, Adivasis, and migrants from the poorest states, reflecting the intersection of caste, ethnicity, and economic vulnerability.

The construction industry, which employs tens of millions of workers, is characterized by the absence of formal employment contracts, the denial of social security benefits, severe occupational safety failures, and the routine use of wage theft (the non-payment of wages that have been earned). The construction of major public infrastructure projects, including the venues for the 2023 G20 summit hosted by India in Delhi, has been associated with documented labor rights violations, including the death of workers in construction accidents and the non-payment of wages.

4.5 Development-Induced Displacement and the Right to Home

The right to adequate housing, recognized in Article 11(1) of the ICESCR and elaborated by the Committee on Economic, Social and Cultural Rights in General Comment No. 4, includes protection against forced eviction. The Committee has defined forced eviction as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." Forced eviction violates the right to housing, and may also violate rights to life, to privacy, to property, and to family life.

Development-induced displacement is the largest category of forced displacement globally. In India, it has affected tens of millions of people over the post-independence period. The construction of large dams alone has displaced an estimated forty to fifty million people since 1947, predominantly Adivasi communities living in the river valleys in which dams are typically built. The Narmada Dam projects, which have been the subject of one of the most sustained social movements in post-independence Indian history, the Narmada Bachao Andolan led by Medha Patkar, illustrate the pattern: communities are promised resettlement and rehabilitation, the promises are poorly fulfilled, communities are left without adequate replacement land or livelihoods, and the legal processes for challenging displacement are effectively inaccessible to poor and illiterate communities.

The Supreme Court's handling of the Narmada case, particularly the 2000 judgment in Narmada Bachao Andolan v. Union of India, in which the Court permitted the dam construction to continue despite findings that the rehabilitation of displaced communities was inadequate, has been extensively criticized as a failure of constitutional protection. The dissenting judgment of Justice Bharucha, who found that the majority had failed to give adequate weight to the rights of the displaced communities and had accepted the government's assurances without adequate verification, has been endorsed by most legal scholars who have written on the case.

More recent displacement has been driven by industrial mining, particularly in the mineral-rich states of Jharkhand, Chhattisgarh, Odisha, and Goa, which are home to both significant deposits of iron ore, coal, bauxite, and other minerals and to large populations of Adivasi communities. The legal framework for environmental and social impact assessment requires the free, prior, and informed consent of affected communities before industrial projects can proceed, but as in the forest rights context, the consent requirement has been systematically circumvented through procedural manipulation and outright falsification.

The "bulldozer justice" phenomenon examined in Part Two in the context of religious discrimination also intersects with development-induced displacement. Several of the demolition drives documented in 2024 and 2025, including demolitions in Assam targeting Bengali-speaking Muslim communities, have been justified partly on grounds of land regularization and development planning, and partly on the grounds that the occupants are "illegal encroachers" on government land. The combination of religious targeting and development justification creates a particularly potent mechanism for displacing communities from land they have occupied for generations while denying them any recognition of their long-standing presence.

CHAPTER FIVE: WOMEN'S RIGHTS, GENDER-BASED VIOLENCE, AND THE FAILURES OF THE LEGAL SYSTEM

5.1 The Feminist Jurisprudential Framework

Feminist jurisprudence offers several frameworks for analyzing the relationship between law, gender, and violence. Catherine MacKinnon's analysis of the law's "point of view," which holds that law has historically been created by men and for men, and that it systematically fails to recognize or address the forms of harm that are specific to women's experience, is one of the foundational texts in this tradition. Her work on sexual harassment and rape law, which she developed in the 1970s and 1980s, identified the specific ways in which legal categories, evidence requirements, and institutional cultures conspire to deny women access to justice for sexual violence.

The concept of "rape culture," developed by sociologists and feminist scholars including Susan Brownmiller, Catharine MacKinnon, and more recently scholars like Anastasia Powell and Nicola Henry, is directly applicable to India. Rape culture describes a social environment in which sexual violence against women is normalized, excused, and even celebrated; in which victims are blamed for the violence they experience; in which perpetrators enjoy social protection through networks of male solidarity; and in which the legal system's failure to prosecute and convict perpetrators is itself a manifestation of the culture's normalization of violence. All of these features are abundantly present in India.

Martha Fineman's vulnerability theory, introduced in Part One, is particularly useful for understanding the specific vulnerabilities of women in India. Fineman argues that the state's obligation to distribute resilience means that it must actively work to strengthen the resilience of those who face the greatest vulnerabilities. Women in India face compound vulnerabilities: vulnerability to sexual violence, compounded by the vulnerability of caste for Dalit women; vulnerability to domestic violence, compounded by economic dependence; vulnerability to exploitation in the workplace, compounded by the absence of formal employment protections for the majority of working women. The state's failure to distribute resilience, meaning to provide effective legal protection, social support systems, and economic opportunities, represents a fundamental violation of Fineman's account of what justice requires.

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5.2 The Scale of Gender-Based Violence: Documentation and Analysis

The National Crime Records Bureau reported 31,516 cases of rape in 2022, the most recent year for which comprehensive data is publicly available. This figure, as with all crime statistics in India, significantly understates the actual scale of the problem. Estimates of the proportion of sexual violence cases that are reported range from five percent to less than twenty percent, suggesting actual rape rates several times the official figure. The barriers to reporting are multiple: shame and stigma attached to sexual violence victims, fear of retaliation from perpetrators and their families or communities, distrust of and hostility from police, fear that reporting will produce worse outcomes for the victim including re-traumatization in the investigative and judicial process, and in many cases the active discouragement of reporting by family members who fear social consequences.

The Rape, Abuse and Incest National Network (RAINN), which is the leading US-based sexual violence organization, has developed research on the specific factors that prevent sexual violence victims from reporting to law enforcement. Applied to India, these factors include: shame and embarrassment (a particularly powerful deterrent in societies where sexual violence is blamed on victims); belief that the police will not help; belief that the police are biased against the complainant; fear of revictimization in the criminal justice process; and fear of retaliation from the perpetrator. All of these factors are heightened in India's context, where police hostility to rape complainants, particularly from Dalit and minority communities, is extensively documented.

The rape and murder of a thirty-one-year-old doctor at R.G. Kar Medical College in Kolkata in August 2024 provoked nationwide protests that were arguably the most significant feminist mass mobilization in India since the nationwide protests following the December 2012 gang rape in Delhi, which led to significant amendments to the rape law. The Kolkata case was particularly resonant because it occurred in a workplace, demonstrating that professional women in urban settings are not safe from sexual violence even in their places of work; because the initial response of the hospital and the police suggested an attempt to cover up the crime rather than investigate it; and because it crystallized the sense, already widely held among Indian women, that the legal reforms following the 2012 case had not produced substantive changes in the culture of impunity for sexual violence.

The protests following the Kolkata rape and murder were remarkable for their scale, their organizational character, and their explicit political content. Women took to the streets in cities across India, organized largely through social media and feminist networks, demanding not merely justice in the specific case but systemic change, including reform of workplace safety regulations, faster processing of sexual violence cases in courts, greater representation of women in positions of police and judicial authority, and an end to what protesters described as the normalization of sexual violence against women. The HRW 2025 World Report devoted significant attention to the protests and to the government's response, which was to make some procedural gestures toward reform while failing to address the systemic issues the protesters identified.

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5.3 Marital Rape and the Legal Lacuna

Among the most important remaining legal failures in India's sexual violence framework is the non-criminalization of marital rape. India is one of a small number of countries in the world where sexual intercourse without consent is not recognized as rape when the parties are married. The exception for marital rape was inherited from colonial law (specifically from Macaulay's IPC, which contained an exception for intercourse "by a man with his own wife, the wife not being under fifteen years of age"), and it was substantially maintained in the criminal law amendments of 2013 and in the Bharatiya Nyaya Sanhita of 2023, which raised the age threshold to eighteen but otherwise preserved the exception.

The legal basis for the marital rape exception is a concept that has no legitimate place in modern law: the doctrine of implied consent, under which marriage is taken to imply permanent consent to sexual intercourse. This doctrine was rejected by English courts in R v. R decided in 1991, by the European Court of Human Rights in M.C. v. Bulgaria in 2003, and by the ICCPR monitoring committee in multiple decisions. The UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee), which monitors compliance with the Convention on the Elimination of All Forms of Discrimination Against Women to which India is a party, has repeatedly called on India to criminalize marital rape.

A constitutional challenge to the marital rape exception was pending in the Supreme Court as of early 2026. The Delhi High Court had previously produced a split verdict on the constitutional question in 2022, with the two judges on the bench holding opposing views on whether the exception was constitutionally valid. The case was referred to the Supreme Court for final determination. The government's position in the litigation was that criminalization of marital rape would "destabilize the institution of marriage," a position that has been widely criticized as prioritizing institutional form over individual rights and as failing to recognize that the right to bodily integrity does not depend on marital status.

5.4 Domestic Violence and the Limitations of the 2005 Act

The Protection of Women from Domestic Violence Act of 2005 represents a significant advance in the legal framework for addressing intimate partner violence. It recognizes domestic violence broadly to include not only physical violence but psychological, sexual, economic, and verbal abuse. It provides civil remedies including protection orders, residence orders, and monetary relief. It creates a network of Protection Officers, Service Providers, and Shelter Homes to support victims.

But the Act's implementation has been chronically inadequate. The Protection Officers, who are the frontline officials responsible for receiving complaints, preparing Domestic Incident Reports, and supporting victims through the legal process, are vastly under-resourced and frequently undertrained. The system of registered Service Providers, who are meant to provide counseling and support services, functions unevenly across states. The Shelter Homes to which victims can turn for emergency accommodation are insufficient in number, often poorly maintained, and frequently inaccessible to women in rural areas.

The courts have been more effective at providing remedies under the Act than the administrative framework has been at preventing abuse and supporting victims. The Supreme Court's judgment in Indra Sarma v. V.K.V. Sarma in 2013 extended the Act's protection to women in live-in relationships, reflecting a progressive interpretation of the Act's scope. But access to courts is itself a major barrier: the legal literacy required to navigate the judicial system, the cost of legal representation, the time required for proceedings, and the practical vulnerability of women who may face retaliatory violence if they initiate proceedings all combine to make judicial remedies practically inaccessible for many victims.

5.5 Feminist Theory and the Limits of Formal Law

The theoretical literature in feminist jurisprudence raises deep questions about whether formal legal reform is sufficient to address the structural conditions that produce gender-based violence. Robin West's "Jurisprudence and Gender" published in 1988 argues that the liberal legal tradition's fundamental assumption of atomistic individualism, the conception of the legal subject as a self-sufficient, self-determining individual who encounters others as potential objects of rights claims and contractual obligations, systematically misrepresents the relational, interdependent, and embodied character of women's experience. Laws premised on this liberal individualism will inevitably fail to capture the forms of harm that women experience in relationships of intimacy, dependence, and structural subordination.

Patricia Williams, in "The Alchemy of Race and Rights" published in 1991, argues further that the emphasis on formal rights in liberal legal theory conceals the importance of social context in determining whether rights are meaningful. For the doubly and triply marginalized women whose situation has been examined throughout this chapter, the formal rights guaranteed by India's legal framework, including the right to equality, to life, to dignity, and to protection from violence, are rendered substantially meaningless by the social, economic, and institutional contexts in which they must be exercised. A Dalit woman in a rural area who reports rape to a police officer from the dominant caste is exercising a formal right; but the institutional reality she faces makes the effective exercise of that right almost impossible.

These theoretical insights point toward what feminist activists and scholars describe as a "transformative" approach to women's rights: one that goes beyond formal legal reform to address the underlying social conditions of patriarchy, caste, and economic dependence that produce gender-based violence and deny women access to justice. This approach recognizes that law is both a cause of oppression and a potential site of resistance, and that effective protection of women's rights requires both legal reform and the transformation of the social conditions that make formal legal protections inadequate.

The Uniform Civil Code debate, which resurfaced in 2023 when the Law Commission invited submissions on the subject and which has been implemented in Uttarakhand in January 2025 (the first state to do so), illustrates the complexity of feminist engagement with formal law. A Uniform Civil Code, which would replace the existing religion-based personal laws governing marriage, divorce, inheritance, and guardianship with a single secular code, has been supported by some feminist scholars and activists on the grounds that the existing personal laws, particularly the Muslim Personal Law (Shariat) Application Act, the Hindu Marriage Act, and

the Hindu Succession Act, contain provisions that are discriminatory against women. But it has been opposed by others on the grounds that the BJP's advocacy of a UCC is motivated not by concern for women's rights but by the desire to eliminate the separate legal identity of the Muslim community, and that any UCC enacted by the current government would not necessarily be more protective of women's rights than the personal laws it replaces, while it would serve as a vehicle for Hindu cultural nationalism.

The Uttarakhand UCC, implemented in January 2025, has been criticized by both liberal and feminist scholars for containing provisions that are not obviously more protective of women than existing laws (for example, its provisions on live-in relationships impose registration requirements that are potentially invasive of privacy), and for its explicit focus on registering live-in relationships as a mechanism for "combating religious conversions via fraudulent marriages," which is Hindutva code for the "love jihad" conspiracy theory, an agenda driven by communalism rather than concern for women's rights.

CHAPTER SIX: LGBTQ RIGHTS AND THE JURISPRUDENCE OF SEXUALITY

In the context of India as a fully secular and culturally advanced non-muslim country unlike other neighbouring countries like Bangladesh, Pakistan, Nepal etc; India need to address and accept the LGBTQ rights in the territorial zone. But similar suggestion is not true for Bangladesh, Pakistan and other countries with Islamic mindset.

6.1 The Historical Background: Section 377 and Its Legacy

The colonial legacy in the area of sexuality law is particularly significant. Section 377 of the Indian Penal Code, titled "Unnatural Offences," was enacted by the colonial authorities in 1861 and criminalized "carnal intercourse against the order of nature with any man, woman or animal." The provision, derived from Victorian-era moral theory and reflecting the colonial authorities' importation of English criminal law into the Indian context, created a criminal prohibition on sexual activity between same-sex adults that persisted for over 150 years after its enactment.

The provision had multiple legal, social, and psychological consequences for LGBT+ individuals in India. At the legal level, it provided a basis for blackmail, harassment, and extortion by police, criminal gangs, and others who could threaten LGBT+ individuals with arrest and prosecution. At the social level, its existence expressed and reinforced the stigmatization of same-sex relationships and non-binary gender identities in a social context where legal prohibition carries significant cultural weight. At the psychological level, the criminalization of sexual identity is associated with increased rates of depression, anxiety, and suicide among LGBT+ individuals, as documented in multiple studies from multiple countries.

The legal challenge to Section 377 was initiated by the Naz Foundation, an HIV/AIDS NGO, which filed a petition in the Delhi High Court in 2001 arguing that the criminalization of consensual same-sex sexual activity violated the fundamental rights of LGBT+ individuals under

Articles 14, 15, 19, and 21 of the Constitution. The Delhi High Court's 2009 judgment in Naz Foundation v. Government of NCT of Delhi, authored by Chief Justice A.P. Shah, was a landmark decision in Indian constitutional history. The judgment read Articles 14, 15, 19, and 21 together to hold that the criminalization of consensual adult same-sex sexual conduct violated the fundamental rights of dignity, equality, and liberty. The judgment drew extensively on comparative constitutional jurisprudence from South Africa, the United States, Canada, and the European Court of Human Rights, and produced a reading of constitutional rights that was both theoretically sophisticated and practically transformative.

The Supreme Court's reversal of the Delhi High Court in the 2013 Suresh Kumar Koushal v. Naz Foundation decision was a devastating setback. The Supreme Court held, by a two-judge bench, that Section 377 did not violate the Constitution, reasoning that the provision targeted conduct rather than identity, that the "so-called rights" of LGBT+ individuals could not be said to be infringed by the provision, and that any change to the law should be made by the legislature rather than the courts. The judgment was widely condemned by constitutional scholars, LGBT+ rights organizations, human rights bodies, and international commentators as poorly reasoned, constitutionally inconsistent, and morally unjustifiable.

The Supreme Court's later constitutional bench judgment in Navtej Singh Johar v. Union of India in 2018 overruled Koushal and decriminalized consensual same-sex activity between adults. The Navtej judgment was written by four of the five judges on the bench, with Chief Justice Dipak Misra writing one opinion and Justices Nariman, Chandrachud, and Malhotra each writing separate concurring opinions. The judgment is remarkable for its intellectual depth, its engagement with the philosophy of dignity, its analysis of constitutional history, and its explicit grappling with the legacy of colonial morality law in India's contemporary constitutional order. Justice Chandrachud's concurrence is particularly important for its critique of the "order of nature" reasoning as embedded colonial-era moral discourse that has no place in a rights-based constitutional order.

6.2 After Decriminalization: The Legal Landscape in 2024-2026

The decriminalization of consensual same-sex activity in Navtej Singh Johar did not resolve the broader human rights situation of LGBT+ individuals in India. Decriminalization removed one major legal barrier but left in place a comprehensive framework of legal disadvantage, social discrimination, and institutional hostility that continues to substantially restrict the lives of LGBT+ Indians.

The most significant remaining legal gap is the absence of legal recognition for same-sex relationships. Same-sex couples cannot legally marry, cannot adopt children jointly, cannot access survivor benefits under pension and social security schemes, cannot be recognized as next of kin for medical decision-making purposes, and face numerous practical disadvantages in areas from banking and insurance to immigration. The legal system treats same-sex relationships as legally invisible, which in practice means treating same-sex partners as legal strangers to each other.

The Supreme Court addressed the question of same-sex marriage in its October 2023 judgment in Supriyo v. Union of India. By a four-to-one majority, the Court held that there is no constitutional right to same-sex marriage, that the Special Marriage Act (which governs civil marriage for non-religious marriages in India) does not need to be interpreted to include same-sex couples, and that any extension of marriage rights to same-sex couples would be a matter for the legislature rather than the court. The majority rejected the argument that same-sex couples' dignity and equality rights require the recognition of their relationships through marriage or equivalent legal status.

The judgment has been subjected to extensive scholarly criticism. Constitutional law scholars including Tarunabh Khaitan, Gautam Bhatia, and others have argued that the majority's reasoning is inconsistent with the principles established in Navtej Singh Johar: if the Constitution protects the dignity and autonomy of LGBT+ individuals, it is difficult to see how it can allow the law to treat their relationships as legally invisible while recognizing the relationships of different-sex couples across multiple dimensions of law. Justice Chandrachud, who wrote a partial dissent from which he subsequently distanced himself in unusual circumstances that attracted significant commentary, originally argued that the denial of legal recognition to same-sex relationships constituted unconstitutional discrimination.

The government's position in the case was explicitly hostile to same-sex marriage rights. The Solicitor General argued that marriage is a fundamentally heterosexual institution and that any extension of marriage rights to same-sex couples would require a comprehensive reworking of India's legal system that is a legislative rather than a judicial function. The government also invoked what it described as "Indian values" and the view that same-sex marriage is against the "Indian ethos," an argument that critics identified as reproducing the colonial-era "order of nature" reasoning that Navtej had rejected in the criminal law context.

6.3 Trans Rights: The Paradox of Recognition

The Transgender Persons (Protection of Rights) Act of 2019 represents an effort by the Indian legislature to provide legal recognition and protection to the transgender community. But the Act, while symbolically significant as the first national legislation specifically addressing transgender rights, has been extensively criticized by transgender rights organizations and the transgender community for its inadequacies and for some of its provisions that they consider actively harmful.

The most controversial provision is the requirement that transgender persons obtain a certificate of identity from the District Magistrate in order to legally change their gender identity on official documents. The certification process requires the District Magistrate to assess whether the person is indeed transgender, a requirement that inverts the principle of self-identification that is the international standard for gender identity recognition. The World Health Organization, the UN Office of the High Commissioner for Human Rights, and multiple other international bodies have endorsed the principle of self-identification, meaning that legal recognition of gender identity should be based on the person's own declared identity rather than on any administrative or medical certification process.

The Hijra community, which is one of the most historically significant and visible transgender communities in South Asia, has its own complex relationship with the formal legal recognition of transgender identity. The Supreme Court's National Legal Services Authority (NALSA) v. Union of India judgment of 2014, which preceded the 2019 Act and is widely considered a more progressive decision, had recognized the right of transgender persons to self-identify and had specifically recognized the Hijra community's historical presence and the rights associated with that presence. The 2019 Act has been criticized as a step backward from the NALSA framework, replacing self-identification with administrative certification and failing to adequately recognize the specific needs and vulnerabilities of Hijra and other traditional transgender communities.

Violence against transgender persons in India is widespread and systematically underdocumented. The National Crime Records Bureau does not maintain disaggregated data on crimes against transgender victims. Civil society organizations that monitor violence against the trans community report numerous incidents of sexual violence, extortion, and physical assault, particularly against Hijra communities who rely on traditional livelihoods of begging and blessing at social occasions. The police are frequently responsible for harassment, extortion, and violence against transgender persons rather than providing protection, and the criminalization of sex work (which many transgender persons engage in due to the absence of other economic opportunities) creates additional legal vulnerability.

6.4 Theoretical Frameworks: Queer Theory and the Law

Queer theory, as a body of thought, challenges the binary categories of sex and gender that are built into most legal systems and that serve to regulate and discipline non-normative bodies and identities. Judith Butler's account of gender as "performativity" in "Gender Trouble" published in 1990 argues that gender is not a natural given but a series of repeated performances that gradually come to appear natural and inevitable. The legal enforcement of binary gender categories, including through the certification requirements in the 2019 Transgender Act, is, from a queer theory perspective, the law's participation in the social process of producing and enforcing gender norms.

Eve Kosofsky Sedgwick's analysis in "Epistemology of the Closet" published in 1990 identified the structural instability of the hetero-homo binary and the specific forms of violence, social exclusion, and institutional discrimination that flow from maintaining it. Applied to India, Sedgwick's analysis helps explain why the formal decriminalization of same-sex conduct in Navtej Singh Johar has not eliminated the pervasive social and institutional discrimination against LGBT+ individuals: the binary structures of gender and sexuality are embedded so deeply in social institutions, from the family to the school to the workplace to the healthcare system, that legal decriminalization alone cannot displace them.

David Halperin's historical analysis of sexuality, drawing on Foucault's genealogy of sexuality in "The History of Sexuality" published in French in 1976, demonstrates that the categories of "homosexual" and "heterosexual" are not universal human constants but historically specific inventions of the nineteenth century, invented precisely in the period when Section 377 was being enacted by colonial authorities. This historical insight has important jurisprudential implications: if the prohibition of same-sex conduct was premised on a historically contingent

and culturally specific construction of sexuality, it has no legitimate claim to universal validity or to the authority of tradition. This is precisely the argument that Justice Chandrachud made, in somewhat different terms, in his Navtej Singh Johar concurrence, when he described Section 377 as a colonial imposition that must be understood in its historical context and evaluated against constitutional rather than Victorian standards.

CHAPTER SEVEN: INDIA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS AND ITS PATTERN OF RESISTANCE

7.1 India's Treaty Obligations: A Mapping

India's international human rights obligations are more extensive than is commonly recognized, both by international commentators who treat India's non-accession to the Rome Statute and the Convention Against Torture as defining features of its international legal profile, and by Indian government officials who sometimes present India's treaty commitments as somehow more conditional than those of other states.

India is a party to the following major human rights treaties: the International Covenant on Civil and Political Rights (ratified 1979), the International Covenant on Economic, Social and Cultural Rights (ratified 1979), the Convention on the Elimination of All Forms of Racial Discrimination (ratified 1968), the Convention on the Elimination of All Forms of Discrimination Against Women (ratified 1993), the Convention on the Rights of the Child (ratified 1992), the Convention on the Rights of Persons with Disabilities (ratified 2007), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (signed 1997, but NOT ratified).

The last entry is of particular significance. India signed the Convention Against Torture in 1997, expressing in principle its acceptance of the convention's prohibitions, but has not ratified it, meaning that its obligations under the convention are not legally binding in the same way as ratified treaties. The refusal to ratify the Convention Against Torture after nearly three decades is consistent with the extensive documentation of torture in police and military contexts in India: ratification would commit India to creating the monitoring and accountability mechanisms that the convention requires, and would make it more difficult to maintain the effective impunity for torture that currently characterizes the Indian system.

India is not a party to the Rome Statute of the International Criminal Court, which means that the ICC has no jurisdiction over crimes against humanity, war crimes, or genocide committed by Indian nationals or on Indian territory, unless referred by the UN Security Council (in which India, as a non-permanent member, has no veto but as a state of the P5's strategic interest, enjoys significant diplomatic protection from referral). The non-accession to the Rome Statute is consistent with India's resistance to international accountability mechanisms more generally, and reflects its position as a state that has significant reason to shield its security forces from international criminal accountability.

India is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance. Given the extensive documentation of enforced disappearances in Kashmir and the Northeast, this non-accession is not surprising but is highly significant from a human rights accountability perspective.

India is not a party to the Optional Protocol to the Convention Against Torture (OPCAT), which would require it to allow a UN body to conduct periodic visits to places of detention. This non-accession, combined with the non-ratification of the parent convention, reflects a comprehensive resistance to external oversight of India's detention practices.

7.2 Treaty Body Monitoring and India's Response Pattern

The UN treaty bodies that monitor India's compliance with the treaties it has ratified have consistently identified serious concerns and made recommendations that India has systematically failed to implement. The pattern of India's engagement with the treaty monitoring system is worth examining in detail because it reveals a distinctive strategy of formal engagement combined with substantive non-compliance.

The Human Rights Committee, which monitors compliance with the ICCPR, reviewed India's fifth periodic report in July 2024. The Committee's concluding observations were comprehensive and critical. The Committee expressed concern about: discrimination and violence against religious minority communities; the use of broad and ill-defined laws, including the UAPA, to restrict civil liberties; impunity for security forces; conditions in places of detention; discrimination against Dalit women; the situation in Manipur; restrictions on civil society; internet shutdowns; and child labor and bonded labor. The Committee made specific recommendations on each of these issues, including repealing or amending the UAPA to bring it into conformity with the ICCPR, ratifying the Optional Protocol to the ICCPR (which would allow individuals to bring complaints directly to the Committee), and establishing independent and effective oversight mechanisms for security forces.

India's standard response to treaty body recommendations is consistent across the different bodies: the government acknowledges the recommendations, provides information about domestic laws and institutions that it claims address the concerns, and insists that India's constitutional framework and democratic institutions are adequate to address any issues that arise. The government typically disputes the factual basis for specific concerns identified by treaty bodies, characterizing them as based on unreliable or biased sources. And it consistently invokes the principle of state sovereignty as a reason why specific treaty body recommendations need not be followed.

This pattern of formal engagement and substantive non-compliance is, in the language of international relations theory, an instance of what Beth Simmons in her influential 2009 work "Mobilizing for Human Rights: International Law in Domestic Politics" describes as "symbolic compliance": the performance of engagement with the international system without substantive change in the domestic practices the system criticizes. Simmons's analysis suggests that symbolic compliance is most common in states where the domestic audience for treaty-based constraints is relatively weak, meaning where civil society, political parties, or other domestic actors cannot

effectively use treaty commitments as political leverage against the government. India's suppression of civil society, examined in earlier chapters, directly reduces the domestic pressure that might force substantive rather than symbolic compliance with treaty body recommendations.

7.3 The UN Special Procedures and the Access Deficit

The UN Special Procedures are independent experts, special rapporteurs, working groups, and independent experts appointed by the UN Human Rights Council to monitor specific human rights themes or country situations. At last count, nineteen visit requests from UN Special Procedures have been pending with the Indian government, including a request from the Special Rapporteur on torture that was first submitted in 1999 and has been reiterated numerous times without acceptance.

This access deficit is itself a significant human rights concern. The Special Procedures system operates on the principle of country engagement: special rapporteurs visit countries, examine conditions on the ground, meet with victims and civil society, and produce reports that form part of the global human rights record. A state that refuses to allow special rapporteur visits for extended periods effectively shields itself from this accountability mechanism. India's twenty-five-year refusal to allow the Special Rapporteur on torture to visit is, in the context of extensive documentation of torture in Indian detention facilities, a clear example of selective engagement with the UN human rights system: engaging formally while blocking the mechanisms most likely to produce substantive documentation of specific violations.

The OHCHR press release of November 24, 2025, in which UN experts expressed alarm about the Indian authorities' response to the Pahalgam attack, including the arbitrary arrest and detention of around 2,800 individuals, internet shutdowns, and the blocking of thousands of social media accounts, drew a response from the Indian government that was characteristic of its standard approach: dismissing the concerns as based on misinformation, asserting that India's actions were consistent with its domestic law, and invoking national security as justification for the measures taken. The Indian government's response did not engage with the specific international legal standards cited by the UN experts or with the evidence on which their concerns were based.

The UN Special Rapporteur on human rights defenders has made multiple communications to India regarding the arrest and detention of human rights defenders under the UAPA. In each case, the Indian government has denied that the individuals concerned are human rights defenders, characterizing them instead as supporters of or participants in terrorist organizations. The government's response strategy of re-labeling human rights defenders as terrorists or Maoists is consistent across all the major UAPA cases: it is a systematic attempt to defeat the special rapporteur's legal framework by contesting the factual characterization of the individuals whose treatment is being scrutinized.

7.4 The Human Rights Council and India's Strategic Engagement

India's engagement with the UN Human Rights Council reflects the same pattern of strategic engagement designed to participate in and influence the international human rights system while

avoiding substantive accountability for domestic violations. India was elected to the Human Rights Council for the term 2022-2024, and was re-elected in October 2025 for the term 2026-2028.

The paradox of India sitting on the Human Rights Council while simultaneously violating multiple human rights obligations has been noted by human rights organizations. The Council's membership includes many states with poor human rights records, and this is a structural problem with the Council: its membership is determined by regional political groupings rather than by human rights performance criteria. India's use of its Council membership to influence agenda-setting, to block country-specific resolutions, and to build coalitions that protect states from accountability is consistent with the behavior of other Council members with problematic human rights records.

India's specific positions at the Human Rights Council on issues related to South Asia have been consistently self-protective. India has opposed any Council engagement with the situation in Kashmir, insisting that Kashmir is an "internal matter." India has supported the Sri Lankan government against accountability resolutions at the Council, reflecting the bilateral strategic relationship discussed in Part Two. And India has used its diplomatic weight within the Asian regional group to maintain a generally deferential approach toward state sovereignty that limits the Council's ability to engage effectively with violations by Council members or their allies.

The Amnesty International 2025 report noted that at the 45th session of the Global Alliance of National Human Rights Institutions (GANHRI) in March 2025, the NHRC was recommended for downgrading from "A" status to "B" status, citing concerns about its independence, transparency, and effectiveness. The significance of this recommendation is that "A" status national human rights institutions are entitled to participate in UN human rights mechanisms in ways that "B" status institutions are not. The downgrading recommendation reflects concerns that the NHRC lacks independence from the government, that it does not adequately investigate violations by security forces (who are explicitly excluded from its jurisdiction), and that its processes lack the transparency required for genuine human rights monitoring. India's response was to contest the recommendation, asserting that the NHRC meets all international standards for independent national human rights institutions.

7.5 The International Law Dimensions of "Bulldozer Justice"

The practice of "bulldozer justice," which has been analyzed in Part Two in the context of religious discrimination, also has important international law dimensions that warrant extended treatment in this chapter.

In June 2025, three UN Special Procedures mandate-holders issued a joint statement calling on India to halt its practice of arbitrary and punitive demolitions disproportionately targeting Muslim communities. The mandate-holders described this practice as "an aggravated form of human rights violation." The legal basis for this characterization is well-established in international human rights law.

The Committee on Economic, Social and Cultural Rights' General Comment No. 4 on the right to adequate housing identifies protection against forced eviction as a core component of that right. General Comment No. 7 on forced evictions specifically addresses the legal requirements that must be met before any eviction can proceed: genuine consultation with affected persons, adequate notice, the provision of legal recourse and remedies, legal aid for those who need it, and provision of alternative accommodation or land to those who cannot afford it.

The demolitions documented in India in 2024 and 2025 fail virtually all of these requirements. Many demolitions occur without adequate advance notice: communities are given hours rather than days or weeks before their structures are demolished. Legal recourse is effectively unavailable because the demolition typically proceeds before any court can intervene. Alternative accommodation is rarely if ever provided. And, most fundamentally, the targeting of Muslim communities specifically for the application of building regulations that are not applied with equal force to other communities constitutes discrimination in the implementation of the right to housing, which is itself a violation of the Convention on the Elimination of Racial Discrimination and of the ICESCR.

The Supreme Court's October 2024 judgment criticizing bulldozer demolitions was a positive development, as noted in Part Two. But the judgment's impact has been limited by the continuing failure of enforcement. When the Court issues directions that state governments simply ignore, the rule of law is doubly violated: first by the action that the Court condemned, and second by the defiance of the Court's authority. The relationship between judicial authority and executive compliance in India under the current government has become one in which the executive treats court directions as suggestions to be considered rather than as binding orders to be obeyed, which represents a fundamental subversion of constitutional governance.

7.6 The Border Violence Problem: BSF Killings at India-Bangladesh Border

India's conduct at its international borders with Bangladesh represents a specific category of international human rights violation that has received insufficient attention in international discourse. The Border Security Force, which is responsible for securing India's land borders, has been responsible for the deaths of large numbers of Bangladeshi nationals at the India-Bangladesh border over the period since the BSF was deployed.

The HRW 2026 World Report documented that India's Border Security Force allegedly killed at least ten Bangladeshis at the India-Bangladesh border in the first four months of 2025 alone. Human rights organizations in Bangladesh have documented hundreds of killings at the border over the past decade. The Ain o Salish Kendra, a Bangladeshi human rights organization, has maintained records of BSF killings showing that they number in the dozens annually in most years. The killings often involve persons engaged in informal cross-border trade, which is a common economic activity in the border regions, who are shot by BSF personnel who claim the persons were smugglers or posed a threat.

The international legal framework governing the use of lethal force at borders is clear: the right to life under international human rights law requires that lethal force may only be used when strictly necessary and proportionate to the threat faced, and only when there is no other means of

preventing or addressing the threat. The use of lethal force against unarmed persons engaged in informal trade, who pose no threat to the lives of BSF personnel or others, violates this standard. The pattern of killings at the India-Bangladesh border, which has been ongoing for years without systemic accountability or reform, constitutes a persistent and serious violation of the right to life under international human rights law.

The relationship between India and Bangladesh in the context of border killings illustrates the power dynamics analyzed in Part Two's examination of India as a regional power. Bangladesh has consistently raised the issue of BSF killings through diplomatic channels, and India has consistently provided explanations that characterize the killings as occurring in the context of legitimate security operations. The asymmetry of power between the two states means that Bangladesh has no effective mechanism for pressing India to accountability: it cannot take the matter to international adjudication against India's will, it cannot impose meaningful sanctions, and it depends on India for too many other things to make the BSF killing issue a central confrontation point in the bilateral relationship.

This dependence is itself a human rights issue. When the citizens of a state have a legitimate complaint of human rights violations by a more powerful neighboring state and cannot obtain accountability because of the power asymmetry between the two states, the international system has failed. The UN Security Council, the only body with the authority to enforce international law against powerful states, is effectively inaccessible for issues of this kind, which are not considered "threats to international peace and security" in the narrow sense that triggers Council engagement. The regional human rights mechanism for South Asia that the SAARC framework might have created does not exist: SAARC has no human rights body, no complaints mechanism, and no enforcement capacity. The result is a regional human rights vacuum in which India's violations against the citizens of its neighbors go systematically unaddressed.

7.7 Theoretical Analysis: Why the International System Fails India's Victims

The failure of the international human rights system to hold India accountable for its extensive and well-documented violations raises theoretical questions that deserve careful analysis. The system is not entirely ineffective: treaty body recommendations, UN special procedure reports, and international civil society documentation have all contributed to creating a record of India's violations that is available to policymakers, journalists, and researchers. But the practical accountability consequences of this record are minimal. Why?

Several theoretical frameworks help to explain this failure. First, the structural position of India in the current international system makes it resistant to the pressure mechanisms that have produced accountability in weaker states. India is the world's most populous country, the world's fifth largest economy, an emerging global power with significant strategic relationships with both Western powers (particularly the United States, which sees India as a counterweight to China) and non-Western powers (Russia, several Gulf states, and various African states). This strategic positioning gives India the capacity to absorb international criticism without significant consequences, because too many powerful actors have interests in maintaining productive relationships with India that they are unwilling to sacrifice over human rights concerns.

Second, the concept of "norm cascade" developed by Martha Finnemore and Kathryn Sikkink in their 1998 article "International Norm Dynamics and Political Change" provides a framework for understanding why international human rights norms have produced accountability in some cases but not in India's. Finnemore and Sikkink argue that international norms spread through a process that involves "norm entrepreneurs," the actors who champion new norms; a "tipping point" at which a critical mass of states adopts the norm; and a "norm cascade" in which adoption spreads rapidly. The implementation of norms, however, depends on international and domestic pressure, and the effectiveness of that pressure depends on the target state's vulnerability to it. India's relatively low economic and strategic vulnerability to Western pressure, combined with its ability to access alternative political and economic partners, means that the norm cascade dynamics that have produced accountability in smaller and more economically vulnerable states do not operate as effectively in India's case.

Third, the concept of "whataboutism" as a diplomatic strategy, while often dismissed as mere deflection, has a structural dimension that deserves analysis. When India responds to international human rights criticism by pointing to Western countries' own records on police violence, colonial history, or treatment of migrants, it is not merely deflecting but making a systemic argument about the asymmetric application of human rights norms: powerful states are criticized less intensely than weaker states for equivalent violations. This argument has considerable empirical basis, and the lack of credibility of Western governments as advocates for human rights, particularly in the context of US police violence, European migration policy, and Israel's conduct in Gaza (which India has not condemned), makes it politically difficult for Western governments to maintain sustained pressure on India without appearing hypocritical.

Fourth, Keck and Sikkink's "boomerang model" of transnational human rights advocacy, which posits that domestic civil society organizations that face repression at home can access international allies who then apply pressure on their governments, depends on a robust domestic civil society as the initial stage of the process. India's systematic suppression of civil society through the FCRA, the UAPA, and other mechanisms, documented extensively in earlier chapters, has significantly weakened the domestic civil society organizations that would normally serve as the initiating actors in the boomerang model. The suppression of Amnesty International India, Greenpeace India, and numerous smaller organizations has reduced the organizational capacity and the documented evidence base that transnational advocacy networks need to operate effectively.

CHAPTER EIGHT: THE NEW CRIMINAL LAWS AND THE COLONIAL LEGACY REVISITED

8.1 The Bharatiya Nyaya Sanhita and Its Discontents

In July 2023, the Modi government introduced three bills in Parliament to replace the three major criminal laws that India had inherited from the colonial period: the Indian Penal Code (to be replaced by the Bharatiya Nyaya Sanhita), the Code of Criminal Procedure (to be replaced by the Bharatiya Nagarik Suraksha Sanhita), and the Indian Evidence Act (to be replaced by the

Bharatiya Sakshya Adhiniyam). The bills were passed in December 2023 and came into force in July 2024, in the absence of nearly one hundred and fifty opposition MPs who had been suspended from Parliament for protesting security lapses in the Lok Sabha chamber.

The government presented the new laws as a decolonization project: replacing the colonial-era legal codes with laws rooted in Indian values and Indian justice traditions. The renaming of the laws in Sanskrit-derived Hindi names, the replacement of British-era colonial terminology, and the rhetorical emphasis on "Bharatiya" (Indian) character of the new laws were designed to signal a civilizational break with the colonial legal inheritance.

Legal scholars, practitioners, and human rights organizations have subjected the new laws to comprehensive critical analysis and found that the decolonization rhetoric conceals a substantial continuity in the most problematic features of the criminal law, combined in some respects with the extension and worsening of those features.

The sedition provision is perhaps the clearest example. The Indian Penal Code's Section 124A, which criminalized sedition, was the most notorious of all colonial-era provisions, having been used against Gandhi, Tilak, and other independence leaders. The Supreme Court had stayed Section 124A's operation in 2022 pending review. The Bharatiya Nyaya Sanhita does not include the word "sedition" but contains in Section 152 a provision criminalizing acts that "excite or attempt to excite secessionism, armed rebellion or subversive activities, or feelings of separatist activities or that endanger the sovereignty or unity and integrity of India." The scope of this provision is arguably broader than the old Section 124A, because it is not limited to speech acts but encompasses any "act" that has the proscribed effects.

The organized crime provisions in the new laws, which create offenses of "organized crime" and "petty organized crime," have been criticized for their sweeping definitions that could encompass legitimate trade union activity, political organizing, and social protest. The provision on "terrorist acts" in the new laws substantially replicates the UAPA, creating redundant prosecution pathways that further entrench the use of terrorism law as a tool of political suppression.

The extension of police custody from fifteen days to thirty days for offenses under specific serious offenses in the new laws has been particularly criticized. The existing fifteen-day limit was already considered excessive by international standards, which require that persons arrested be brought promptly before a judicial officer. Extending the custody period to thirty days significantly lengthens the period during which accused persons can be subjected to interrogation without judicial oversight, creating greater opportunities for torture and coercion. The UN Human Rights Committee's July 2024 concluding observations on India's ICCPR compliance specifically noted concern about the extended custody period in the new laws.

The provisions on trial in absentia in the new laws, which allow trials to proceed and convictions to be entered even when the accused person is absent, have been criticized as potentially violating the right to be present at one's own trial, which is a basic procedural due process requirement recognized in Article 14 of the ICCPR. The danger in the Indian context is that trials in absentia could be used against individuals who have fled police harassment or who are in

hiding from non-state actors, creating convictions in their absence that are used to justify their continued persecution.

8.2 The Bail Reform Crisis

The bail system in India has been identified by the Supreme Court itself as fundamentally broken. Justice Sanjay Kishan Kaul, in observations made in 2023 before his retirement, described India's bail system as producing a situation in which vast numbers of people are imprisoned without conviction because they cannot afford to secure bail, which is a form of imprisonment based on poverty rather than on the merits of the case against the accused person.

The data supports this assessment. As of 2023, approximately seventy-seven percent of India's prison population consists of undertrial prisoners, persons who have been arrested and are awaiting trial but have not been convicted of any offense. This is one of the highest proportions of undertrial prisoners in the world. Many of these individuals are held in pretrial detention because they are too poor to pay bail, or because the courts have not processed their bail applications promptly, or because they are held under provisions like the UAPA that make bail virtually impossible to obtain regardless of financial resources.

The Supreme Court attempted to address this in its 2022 judgment in Satender Kumar Antil v. CBI, in which it laid down guidelines for bail, including directions to courts to consider granting bail on the first hearing of bail applications, to give reasons for denying bail, to consider the ability of accused persons to pay when setting bail amounts, and to use alternative conditions such as reporting requirements rather than pre-trial detention for accused persons who are unlikely to flee or interfere with evidence. The judgment was a significant step but its implementation has been uneven: it requires institutional change in the habits of police, prosecutors, and subordinate courts that is slow and difficult to produce through judicial directions alone.

The NHRC's registration of 113 deaths in police custody, 1,535 deaths in judicial custody, and 132 alleged extrajudicial killings in the first eight months of 2025 alone, as documented in the HRW 2026 World Report, represents the human cost of the crisis in the pre-trial detention system. Deaths in judicial custody, which include deaths in prisons where undertrial prisoners are held, are often the result of the conditions in which prisoners are held: extreme overcrowding, inadequate food and water, lack of medical care, and the violence that occurs in overcrowded detention facilities. The prison system's chronic overcrowding is a direct consequence of the excessive use of pre-trial detention.

8.3 Police Reform and Accountability Gaps

The Indian police system, as noted in Part Two's historical analysis, is a colonial institution that has not been fundamentally reformed since independence. The Police Act of 1861, which organizes the structure of police forces across India, remains essentially operative despite numerous expert recommendations for reform. The National Police Commission, which reported between 1977 and 1981, recommended comprehensive reforms including the insulation of police

from political influence, the strengthening of accountability mechanisms, and the creation of independent oversight bodies. Most of these recommendations were not implemented.

The Supreme Court in Prakash Singh v. Union of India decided in 2006 issued seven binding directives requiring states to reform their police systems in specific ways, including the establishment of Police Establishment Boards to make decisions on transfers and appointments free from political interference, the creation of State Security Commissions to provide oversight, and the establishment of independent Police Complaints Authorities to receive complaints against police officers. Compliance with these directives has been poor: most states have nominally created the required bodies but have done so in ways that neutralize their independence and effectiveness.

The culture of police impunity, which is the practical consequence of the failure to reform the accountability framework, is documented in the data: torture in custody is routine, custodial deaths occur at a rate of hundreds per year, false encounter killings occur across the country, and prosecutions of police officers for these violations are extremely rare. The global torture index published in 2025 noted India's failure to establish adequate oversight mechanisms for detention centers and the systematic limitations on the NHRC's jurisdiction, which explicitly excludes violations by armed forces, as creating conditions in which torture goes unsupervised and unpunished.

The February 2025 case in Jammu and Kashmir, in which a twenty-five-year-old man died by suicide, having recorded a video message alleging that police had tortured him after falsely claiming he had links with militant groups, illustrates the human dimension of police impunity. The man's video was his dying accusation, delivered in the knowledge that formal channels for accountability would be unavailable to him. The video attracted brief media attention before being overwhelmed by other news. The accountability process, if any was initiated, produced no publicly known result.

CHAPTER NINE: THE MANIPUR CRISIS AND THE NORMALIZATION OF ETHNIC VIOLENCE

9.1 A Conflict Unaddressed

The ethnic conflict in Manipur that began in May 2023 between the Meitei and Kuki-Zo communities represents one of the most serious humanitarian crises in India in recent decades and the most complete failure of central government responsibility for internal peace in the post-independence period.

The immediate trigger of the May 2023 violence was a Meitei demand for Scheduled Tribe status, which would give the Meitei community access to reservations in education and employment currently available only to tribal communities. Kuki-Zo tribal communities opposed this demand, fearing that ST status for the dominant Meitei community would undermine the protections the tribal reservations provide for smaller tribal groups. The conflict has deeper roots

in competition over land, economic resources, and political representation, as well as in historical tensions between the predominantly Hindu valley-dwelling Meitei community and the predominantly Christian hill-dwelling tribal communities.

The violence that followed was severe and widespread. Hundreds of people were killed. Approximately sixty thousand people were displaced from their villages. Churches, temples, and mosques were burned. Villages were destroyed. Women were subjected to sexual violence. The July 2023 video showing a Meitei mob parading two Kuki-Zo women naked through a village while security forces stood by without intervening went viral globally and provoked international condemnation. The Supreme Court took unusually direct action, describing the incident as a "failure of the state" and directing investigation.

The state government's response to the crisis was characterized by what independent observers described as systematic bias toward the Meitei community. The Chief Minister, N. Biren Singh of the BJP, is himself Meitei, and the state police forces are dominated by Meitei officers. State police forces were documented by civil society organizations as having participated in violence against Kuki-Zo communities rather than protecting them. The Assam Rifles, the paramilitary force deployed in Manipur, was found to have behaved more neutrally, which led to tensions between the state government and the central paramilitary command.

The central government's response was initially one of near-total silence. Prime Minister Modi did not address the Manipur crisis publicly for over seventy days after the violence began, an absence of political leadership that was widely criticized as demonstrating indifference to the suffering of a community that does not form part of the BJP's core electoral constituency. When Modi finally spoke in Parliament, he offered only brief comments before being drowned out by opposition protests. The Home Ministry's response involved deploying additional central forces but did not address the political dimensions of the conflict or hold the state government accountable for its partisan handling of the crisis.

9.2 International Humanitarian Law and Internal Conflict

The Manipur situation raises questions about the applicability of international humanitarian law to internal conflicts of the kind that occurred in Manipur in 2023 and continuing into 2025. Common Article 3 of the Geneva Conventions, which applies to "armed conflicts not of an international character," including internal conflicts in which the parties are not states, requires humane treatment of persons who are not or are no longer taking part in hostilities, including protection against murder, torture, cruel treatment, and outrages upon personal dignity. The sexual violence documented in Manipur, particularly the parading of women, constitutes an "outrage upon personal dignity" that violates Common Article 3 even if the conflict is characterized as below the threshold of an internal armed conflict.

The Optional Protocol II to the Geneva Conventions, which applies to internal armed conflicts of a certain intensity involving organized armed groups, contains more detailed provisions including protection against attack on civilians, prohibition of acts or threats of violence aimed at terrorizing the civilian population, and prohibition of collective punishments. Whether the Manipur violence reached the threshold of armed conflict to which Protocol II applies is a matter

of legal debate, but the human rights law framework provides a parallel basis for condemnation of the specific acts documented.

The central government's failure to act effectively in Manipur also raises questions about its obligations under Article 355 of the Indian Constitution, which places on the Union government a duty to protect every state against "internal disturbance." If the "internal disturbance" provision was the constitutional basis for central government intervention in Kashmir to impose President's Rule and revoke Article 370, the failure to invoke comparable central government authority to protect Kuki-Zo communities from systematic ethnic violence in Manipur suggests that Article 355 is applied selectively: against states governed by opposition parties or in territories whose populations are politically inconvenient, not as a genuine commitment to protecting all Indian citizens from internal disturbance regardless of their political identity or religious affiliation.

9.3 The Continued Violence in 2024 and 2025

The Manipur conflict did not end in 2023. It continued in diminished but still serious form through 2024 and into 2025. The Human Rights Watch 2026 World Report noted that in September 2024, renewed ethnic violence killed at least eleven more people in Manipur, and that students and others who protested were met with police force rather than with genuine efforts at reconciliation or political resolution.

The fundamental political dimensions of the conflict remain unaddressed. No serious dialogue process between the Meitei and Kuki-Zo communities has been established under government auspices. The state government's bias has not been corrected. The displaced persons, primarily from the Kuki-Zo community, have not been able to return to their villages. The accountability process for the 2023 atrocities has produced minimal results: the judicial committee appointed by the Supreme Court produced reports that were not made fully public, prosecutions of perpetrators have been extremely limited, and the political actors whose decisions and statements contributed to the violence have not been held responsible.

The Manipur situation also illustrates the intersection between ethnic conflict and the BJP's political project. The state government's alignment with the Meitei community against the Kuki-Zo community reflects the BJP's characteristic pattern of exploiting and deepening communal divisions for political advantage: the Meitei community forms a larger proportion of Manipur's voting population and is a more significant BJP constituency than the Kuki-Zo tribal communities. The political calculus that underlies the government's response to the conflict, while horrifying from a human rights perspective, is depressingly consistent with the broader pattern of using state power to protect and advance the interests of the ruling party's constituency while denying effective protection to communities whose votes the party does not need.

CHAPTER TEN: THEORETICAL SYNTHESIS: DEMOCRATIC DECAY, RIGHTS EROSION, AND THE POSSIBILITIES OF ACCOUNTABILITY

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10.1 Weaving the Theoretical Threads

The preceding nine chapters of Part Three have examined the institutional mechanisms through which India's human rights violations are sustained and reproduced, from the judiciary's transformation from a counter-majoritarian institution to an executive court, through the systematic suppression of press freedom, to the mechanics of competitive authoritarianism, to the violations of economic and social rights, to the specific experiences of women and LGBT+ individuals, to India's engagement with the international human rights system, to the new criminal laws and their human rights implications, and finally to the Manipur crisis as a case study in the normalization of ethnic violence. In this final chapter of Part Three, the aim is to draw these threads together into a synthetic theoretical account that explains not merely the specific forms of violation but the underlying structural dynamics that produce and sustain them.

The theoretical synthesis proposed here draws on three major bodies of thought: the "legal complex" literature, which examines the relationships between different legal institutions and actors in producing or resisting authoritarian governance; the "populist constitutionalism" literature, which examines how populist movements use constitutional forms to undermine constitutional substance; and the "decolonial turn" in human rights theory, which asks what it means to pursue rights in a postcolonial state where the colonial heritage shapes both the violations and the responses to them.

10.2 The Legal Complex and Institutional Resistance

Tom Ginsburg and Tamir Moustafa's edited volume "Rule by Law: The Politics of Courts in Authoritarian Regimes" published in 2008, together with subsequent work by scholars including Ran Hirschl, David Law, and Mark Tushnet, has developed the concept of the "legal complex" to describe the network of legal institutions, including courts, bar associations, law schools, and the legal profession, whose relative cohesion or fragmentation determines the institutional resilience of the rule of law in conditions of political pressure.

Applied to India, the legal complex analysis reveals both the sources of institutional resilience and the points of institutional vulnerability. India's bar associations, particularly the Supreme Court Bar Association and the High Court bars in major states, have historically included a significant proportion of lawyers committed to constitutional values and to the representation of clients whose cases challenge executive power. Public interest litigation as a practice depends on lawyers willing to bring cases on behalf of communities that cannot afford legal representation. The fact that the Bhima Koregaon accused have had prominent lawyers willing to represent them, despite the professional risks involved, is a manifestation of legal complex resilience.

But the legal complex has also shown significant fragility. The Bar Council of India, which represents the legal profession nationally, has not consistently defended lawyers who have been prosecuted under the UAPA or for contempt of court for challenging judicial decisions. Law schools, with some notable exceptions, have not been consistent sites of constitutional resistance: the academic legal community has been divided and in some cases actively supportive of the government's positions. The professional incentive structure for lawyers, which rewards those who maintain good relationships with the judges before whom they practice, creates constraints

on bar association advocacy for judicial independence similar to the constraints that affect judges themselves.

10.3 Populist Constitutionalism and Its Indian Manifestation

Jan-Werner Muller's account of "populism" in his 2016 work "What Is Populism?" provides a framework for understanding the BJP's constitutional strategy. Muller defines populism as a form of politics that claims that the "real people" can be identified with one particular social formation (in India's case, the Hindu majority, more specifically the dominant-caste Hindu majority), and that the political elite that speaks for this real people has both the mandate and the moral authority to govern without the constraints that liberal constitutionalism imposes. Populist actors, in Muller's account, are anti-pluralist: they deny the legitimacy of political opposition, treat civil society organizations as enemies of the people, and seek to colonize state institutions with their own loyal personnel.

This description maps with considerable precision onto the BJP's political project under Modi. The language of "the 125 crore people of India" that Modi frequently uses presents his electoral mandate as a mandate from all Indians rather than from the fifty percent or so who voted for the BJP or its allies, implicitly delegitimizing political opposition. The characterization of civil society critics as "anti-national," "urban Naxals," or agents of foreign interests is precisely the anti-pluralist delegitimization of opposition that Muller identifies as characteristic of populism. The attempt to subordinate the judiciary, the Election Commission, investigative agencies, and media organizations to the political project of the ruling party is the characteristic populist colonization of state institutions.

But India's case also illustrates the limits of the populist constitutionalism framework. India's constitutional and institutional inheritance is sufficiently deep, and the social and political pluralism of Indian society sufficiently robust, to have produced significant resistance to the full populist project. The 2024 election demonstrated that approximately forty percent of India's electorate does not identify with the BJP's Hindu nationalist project even in an environment in which the playing field is severely tilted against the opposition. Regional parties, civil society organizations, independent journalists, activist lawyers, and at least some elements of the judiciary have maintained positions of resistance that prevent the full authoritarian consolidation that Muller's model would predict for a successful populist movement.

10.4 The Decolonial Critique and Its Implications

The decolonial turn in human rights theory, associated with scholars like Walter Mignolo, Sylvia Wynter, Boaventura de Sousa Santos, and Makau Mutua, raises fundamental questions about the adequacy of the human rights framework as a tool for addressing violations in postcolonial societies. Santos's concept of the "sociology of absences," which identifies the forms of social reality that the dominant epistemological frameworks render invisible, and Mutua's analysis of the "savages, victims, saviors" dynamic in international human rights discourse, are particularly relevant to the Indian case.

Makau Mutua's analysis in "Human Rights: A Political and Cultural Critique" published in 2002 identified a problematic structure in international human rights discourse in which "Western" human rights organizations and governments play the role of "saviors," non-Western states and communities play the role of "savages," and the people in those communities play the role of "victims." This structure, Mutua argues, reproduces the colonial hierarchy in human rights language: it positions Western liberal values as the universal standard and non-Western practices as deviations from it. The practical consequence is that international human rights advocacy often fails to engage with the specific historical, cultural, and political context in which violations occur, and thus fails to develop strategies that are genuinely responsive to the needs of the people they are supposed to serve.

Applied to India, the decolonial critique is complex because it cuts in multiple directions. On one hand, the Indian government regularly invokes versions of the decolonial critique in its responses to international human rights criticism, claiming that Western standards are being inappropriately imposed on a culturally distinct society. This defensive invocation of cultural difference is disingenuous: it serves not to protect marginalized communities from inappropriate cultural imperialism but to shield the dominant group's power from accountability to those communities.

On the other hand, the decolonial critique has genuine application to aspects of the international human rights system's engagement with India. The failure of Western governments to engage seriously with India's human rights violations, partly because India is seen as a strategic partner against China, partly because trade and investment interests are prioritized, and partly because of the cultural assumption that India's elections make it essentially democratic despite the evidence reviewed throughout this textbook, reflects the selective and politically conditioned character of international human rights advocacy that the decolonial critics identify.

The most consistent advocates for the rights of Dalits, Adivasis, Muslims, Kashmiris, and other marginalized communities in India have been not Western human rights organizations, though they play an important role, but Indian human rights defenders and civil society organizations, now severely constrained by FCRA and UAPA. The suppression of these domestic advocates is, from this perspective, the suppression of the most authentic form of human rights advocacy in the Indian context: people from affected communities or their allies advocating for their own rights in their own political system. The international human rights system's inability to protect these domestic advocates from state suppression is a fundamental failure of the accountability system at its most important point.

10.5 The Path Forward: What Accountability Requires

A concluding analysis of what genuine accountability for India's human rights violations would require must be honest about both the possibilities and the constraints. The path forward is not simple, and the obstacles are enormous. But the analysis in this and the preceding parts of this textbook suggests several necessary elements of any serious accountability framework.

At the domestic level, judicial independence must be restored as a genuine institutional reality rather than a formal constitutional claim. This requires reform of the judicial appointment process to introduce genuine transparency, clear criteria, and diverse perspectives; reform of the

incentive structure for judges, including restrictions on post-retirement government employment; strengthening of the contempt jurisdiction to make non-compliance with court orders genuinely costly; and the development of a judicial culture that treats the counter-majoritarian function as the central purpose of constitutional adjudication rather than as an occasional deviation from executive support.

At the legislative level, the UAPA requires fundamental reform or repeal and replacement with a law that provides genuine anti-terrorism powers without the wholesale elimination of procedural safeguards. The FCRA requires amendment to bring it into conformity with the UN Declaration on Human Rights Defenders and to prevent its weaponization against legitimate civil society activity. The new criminal law provisions that extend police custody and facilitate conviction in absentia require amendment to bring them into conformity with the ICCPR. The Transgender Persons Act requires amendment to replace its administrative certification requirement with a self-identification framework. And marital rape must be criminalized.

At the international level, India must ratify the Convention Against Torture and its Optional Protocol, the Convention for the Protection of All Persons from Enforced Disappearance, and the Optional Protocol to the ICCPR that allows individual complaints. It must accept the pending visit requests from UN Special Procedures, beginning with the long-overdue visit from the Special Rapporteur on torture. It must implement the recommendations of the Human Rights Committee's 2024 concluding observations. And it must engage constructively rather than defensively with UN human rights mechanisms.

None of these changes will occur without sustained political pressure from multiple directions: from domestic civil society, from opposition political parties, from the international human rights system, and from the governments and civil societies of other democratic states that have not yet abandoned the commitment to human rights as a genuine rather than a purely strategic consideration. The theoretical frameworks developed throughout this textbook, from natural law through legal positivism through critical race theory through feminist jurisprudence through postcolonial theory, all converge on one fundamental conclusion: rights are not self-executing. They require institutions, political will, accountability mechanisms, and the sustained pressure of those who care about them to become real in the lives of real people.

India has the formal architecture of a rights-respecting constitutional democracy. What it lacks, in many crucial respects, is the political culture, institutional integrity, and social commitment to rights that would make that formal architecture functional. The transformation from formal to substantive constitutional democracy is the central human rights challenge in India today. It is a challenge that requires not merely legal reform but the more fundamental transformation of the political culture and social relations that produce and sustain the violations documented in this textbook. That transformation is the work not of a textbook, however comprehensive, but of movements, communities, advocates, scholars, and ultimately the millions of people whose lives are bounded by the gap between India's constitutional promise and its daily reality.

CONCLUDING REFLECTIONS ON PART THREE

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Part Three has examined the institutional mechanisms through which India's human rights violations are produced, sustained, and defended. The analysis has demonstrated that these violations are not aberrations from a functioning constitutional democracy but systemic features of a political system that has undergone significant democratic backsliding under the pressures of competitive authoritarianism, Hindu nationalist ideology, and the subordination of constitutional institutions to political interests.

The judiciary, which should be the primary counter-majoritarian institution, has shifted from a "Rights Court" to an "Executive Court" through mechanisms of incentive misalignment, value capture, and institutional self-preservation that are structural rather than individually determined. The press, which should be the informational accountability mechanism of democratic governance, has been captured through a combination of legal harassment, ownership concentration, surveillance, and the murder of critical journalists, creating an environment in which self-censorship is the rational response for those who wish to continue their work. The electoral process, which should translate popular preferences into governance, functions in a systematically tilted environment in which structural advantages for the incumbent party make genuine competitive democracy impossible even while maintaining the form of elections. The economic rights of India's most vulnerable populations are systematically violated through development-induced displacement, labor rights erosion, and the structural violence of extreme inequality. The rights of women, LGBT+ individuals, and sexual minorities are inadequately protected by a legal system whose cultural formation and institutional character fail to take their experiences of violation seriously. And India's engagement with the international human rights system is characterized by a strategic combination of formal participation and substantive non-compliance that has largely shielded it from accountability.

The most important theoretical insight that emerges from this analysis is that the specific violations documented throughout this textbook are not independent failures of specific institutions or policies. They are interconnected manifestations of a single underlying dynamic: the systematic prioritization of the interests and preferences of the dominant political-cultural-social formation, represented by the Hindu nationalist project and its upper-caste, Hindi-speaking, North Indian core constituency, over the rights and welfare of the hundreds of millions of Indians who fall outside or are actively excluded from that formation. Understanding this dynamic, in all its complexity and in all its specific manifestations, is essential to developing the responses that genuine accountability requires.

Part Four will turn to an examination of India's international relations and foreign policy through the lens of human rights, examining how the country projects power, manages bilateral relationships, and contributes to or undermines the international human rights order beyond the regional dimensions already examined in Parts Two and Three.

PART FOUR: INDIA IN THE WORLD: FOREIGN POLICY, TRANSNATIONAL REPRESSION, AND THE EXPORT OF AUTHORITARIAN PRACTICE

A Critical Analysis of India's Conduct in International Law, Multilateral Institutions, and Bilateral Diplomacy from the Perspective of Human Rights

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"A state that tortures its minorities at home and then lectures the world about democracy abroad is not practicing diplomacy. It is practicing impunity at scale."

Adapted from Upendra Baxi, "The Future of Human Rights," Oxford University Press, Third Edition

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PREFACE TO PART FOUR

The preceding three parts of this textbook established the philosophical foundations of human rights analysis, documented the historical architecture through which India's domestic violations have been constructed and sustained, and examined the institutional mechanisms through which judicial independence, press freedom, electoral integrity, and the rights of specific communities have been systematically compromised. Part Four moves outward from the domestic sphere to examine how India conducts itself in the world: as a member of the international community bound by treaties and customary international law, as a regional power that shapes the lives of hundreds of millions of people beyond its borders, as a state whose intelligence apparatus has now been credibly implicated in extraterritorial killing on the soil of allied democratic nations, and as a diplomatic actor whose positions at multilateral institutions actively shape the global environment for human rights accountability.

This examination reveals a pattern that is both predictable and disturbing. A state that suppresses dissent at home develops, over time, the habit of suppressing it abroad as well. A state that treats its own minorities as internal security threats develops, over time, the practice of treating diaspora communities as external security threats. A state that cultivates impunity for its security forces within its own borders develops, over time, a foreign policy posture that resists any international mechanism that might impose accountability on those forces. And a state that uses law as a tool of political control domestically develops, over time, a diplomatic strategy designed to prevent international law from constraining its behavior.

India under the BJP government of Narendra Modi has demonstrated all of these tendencies with increasing clarity. The year 2025 was, as the Chatham House assessment noted, arguably India's most challenging foreign policy year, marked by a four-day armed conflict with Pakistan in May, a sharp deterioration in relations with the United States under the Trump administration's tariff regime, continued instability in its neighborhood, and the persisting fallout from the transnational repression cases involving the assassination of a Canadian Sikh leader and the foiling of a plot to assassinate a Sikh American. These developments do not exist in isolation from India's domestic human rights record. They are its external expression.

Part Four examines this external expression through the frameworks of international law, international relations theory, comparative constitutional jurisprudence, and the philosophy of state responsibility. It does not pretend to treat India as uniquely malevolent: most powerful states pursue foreign policies that are at least partially indifferent to human rights. What

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distinguishes India's case is the combination of its democratic claims, which rest on the premise that it is a rights-respecting constitutional democracy entitled to the full respect of the international community, with the reality of its behavior, which increasingly contradicts those claims. The gap between democratic pretension and authoritarian practice is itself a human rights violation of a particular kind: it is the violation that permits all other violations by preventing the accountability that democratic legitimacy is supposed to enable.

CHAPTER ONE: INDIA'S FOREIGN POLICY DOCTRINE AND THE ECLIPSE OF HUMAN RIGHTS

1.1 From Nehruvian Idealism to Strategic Realism: A Historical Trajectory

India's relationship with human rights as a matter of foreign policy has undergone a profound transformation over the seven decades of its independent existence. Understanding this transformation requires engaging with the competing philosophical traditions that have shaped Indian foreign policy and with the structural position India occupies in the international system, a position that has itself changed dramatically since 1947.

The Nehruvian foreign policy of the first decade of Indian independence was animated by a combination of genuine idealism and strategic calculation that placed India at the center of the non-aligned movement and gave it a moral authority in international affairs that was disproportionate to its economic or military power. Nehru's vision of India as a bridge between the Cold War blocs, as a voice for the newly decolonized world, and as an advocate for international law and institutions was not merely rhetorical. India was an early and active participant in the development of international human rights law, and Indian jurists and diplomats contributed meaningfully to the drafting of foundational documents including the Universal Declaration of Human Rights.

The philosophical underpinnings of this early engagement drew on multiple traditions. Gandhi's concept of ahimsa, or non-violence, provided a moral grounding for India's opposition to Cold War militarism. The anti-colonial tradition, which had been the philosophical foundation of the independence movement, made India a natural ally of decolonizing peoples elsewhere and a natural opponent of systems of racial discrimination, including apartheid in South Africa. The socialist commitments of the Congress party, and specifically its emphasis on social and economic rights alongside civil and political rights, positioned India as an advocate for what we would now call third-generation rights: the rights of peoples to development, to self-determination, and to a fair share of the world's resources.

But from the beginning there were profound contradictions between this rhetorical commitment to human rights in foreign policy and the actual conduct of the Indian state. The incorporation of Hyderabad into the Indian Union through the "Police Action" of 1948, which resulted in significant civilian casualties and which the Indian government has consistently refused to subject to independent investigation, was the first indication that India's commitment to self-determination was selective. The annexation of Goa in 1961, conducted through military force

despite Nehru's general commitment to peaceful resolution of disputes, was another. And the Indian government's consistent opposition to any UN engagement with the situation in Jammu and Kashmir, which India claimed was an internal matter despite the explicit UN Security Council resolutions and the international dimensions of the dispute, demonstrated early that India's sovereign interests would consistently override its human rights commitments in foreign policy.

Over the decades following Nehru, Indian foreign policy became progressively less idealistic and more explicitly realist. The 1971 war with Pakistan, which resulted in the creation of Bangladesh, represented a high point of Indian strategic assertion, in which India's intervention was justified in humanitarian terms (the Pakistani military's campaign of mass atrocity in East Pakistan) but served clear strategic interests in dismembering India's primary security rival. The post-1991 period of economic liberalization brought a corresponding shift in foreign policy toward a more transactional orientation, in which trade and investment relationships took priority over principled commitments.

The election of the BJP government under Narendra Modi in 2014 represented not merely a continuation of this drift toward realism but a qualitative shift. The Modi government's foreign policy is characterized by what its advocates call "strategic autonomy" but what its critics describe as strategic opportunism: the pursuit of Indian national interests, defined primarily in terms of economic growth, military capacity, and national prestige, without any consistent commitment to the international order of rules and norms that India ostensibly supports. Human rights, which were already marginal in the pragmatic foreign policy of the Congress governments after Nehru, have become virtually absent from the Modi government's foreign policy framework.

1.2 The Concept of Strategic Autonomy and Its Human Rights Implications

The concept of strategic autonomy, which has been the defining conceptual framework of Indian foreign policy since at least the 1990s and has been given particular emphasis under the Modi government, holds that India should maintain the freedom to make its own foreign policy choices without being bound by any alliance, bloc, or ideological commitment. In practice this means maintaining productive relationships with the United States and its allies while simultaneously deepening economic and strategic ties with Russia, cultivating relationships with Iran and Gulf states, participating in BRICS and the Shanghai Cooperation Organisation alongside China, and generally refusing to align India's foreign policy with any Western-led consensus on specific issues including human rights, democracy, or the rule of law.

The international relations theory most relevant to this posture is a synthesis of classical realism and what has been called "middle power theory" or "hedging theory." Classical realism, associated with Hans Morgenthau's foundational 1948 text "Politics Among Nations," holds that states are the primary actors in international relations and that their behavior is governed primarily by the pursuit of power and security rather than by norms or values. John Mearsheimer's offensive realism, developed in "The Tragedy of Great Power Politics" published in 2001, goes further, arguing that great powers are structurally compelled to pursue dominance because the anarchic character of the international system makes any other posture insecure.

India's behavior in South Asia, and increasingly in global forums, is consistent with an offensive realist logic: it seeks regional dominance, resists constraints on its freedom of action, and treats international norms as instruments to be used selectively rather than as genuine constraints.

But strategic autonomy as India practices it is not merely classical realism. It also incorporates elements of what constructivist theorists, particularly those working in the tradition of Alexander Wendt's "Social Theory of International Politics" published in 1999, call identity politics in international relations. India's claim to a distinctive foreign policy voice, rooted in its civilizational heritage, its colonial history, its democratic identity, and its status as the world's most populous country, is a construction of national identity that shapes what Indian policymakers regard as legitimate behavior. The BJP government has deepened this identity construction by incorporating elements of Hindu nationalist ideology: India's foreign policy is increasingly framed not merely in strategic terms but in civilizational ones, as the expression of "Bharat's" ancient wisdom in the contemporary world.

The human rights implications of strategic autonomy are profound and largely negative. The doctrine of strategic autonomy, as practiced by India, means in practice that India does not allow human rights considerations to constrain its relationships with states that violate human rights. India has maintained productive relationships with Myanmar's military junta, with Saudi Arabia and the Gulf states despite their repressive domestic politics, with Russia despite its war crimes in Ukraine, with Israel despite its conduct in Gaza, and with China despite its documented atrocities in Xinjiang and Tibet. In each of these cases, India's strategic and economic interests have taken priority over any human rights considerations, and India has consistently opposed or abstained on international resolutions that would impose accountability on these states.

This posture is not unique to India among major powers, but it is particularly notable given India's claimed status as the world's largest democracy and its regular invocation of democratic values in its international positioning. The contradiction between democratic rhetoric and strategic opportunism is not merely a matter of hypocrisy, though it is that. It is also a structural feature of the international human rights system: when powerful democracies treat human rights as an instrument of strategic competition rather than as a genuine constraint on behavior, the credibility of the international human rights system is undermined for all states. India's behavior contributes to the normalization of a world in which human rights talk is cheap and human rights accountability is reserved for weaker states that lack the strategic protection of powerful friends.

1.3 India and the United Nations: Participation Without Accountability

India's relationship with the United Nations is illustrative of the broader pattern of strategic engagement combined with resistance to accountability. India is a founding member of the United Nations and has contributed more peacekeeping troops to UN missions than almost any other country. It has been a regular member of the Security Council as a non-permanent member and has long campaigned for a permanent seat. It participates actively in the General Assembly, the Economic and Social Council, and various UN specialized agencies. This extensive participation is regularly cited by India as evidence of its commitment to multilateralism and the international order.

But India's UN participation is consistently characterized by a specific strategic logic: maximizing India's voice and influence in international institutions while minimizing the constraints those institutions impose on India's freedom of action. This logic produces specific behavioral patterns that are directly relevant to human rights accountability.

In the UN General Assembly, India has consistently voted to protect sovereign states from accountability for domestic human rights violations, opposing resolutions that would establish investigative mechanisms or accountability processes for specific country situations. India opposed the resolution establishing the International Commission of Inquiry on Syria in 2012. India abstained on the 2022 resolution suspending Russia from the Human Rights Council following the invasion of Ukraine. India voted against the 2023 General Assembly resolution demanding a humanitarian ceasefire in Gaza, breaking with the large majority of Global South nations that supported the resolution, before later voting in favor of a subsequent ceasefire resolution in 2024 and 2025 as the body count in Gaza mounted.

India's voting record in the General Assembly on human rights-related resolutions reveals a consistent pattern: India votes to protect states from accountability when it has strategic or economic interests in those states, votes on the basis of general principles about non-interference when it wants to oppose accountability without attracting criticism, and occasionally votes in favor of accountability when the political cost of opposing it exceeds the strategic benefit. This is not principled engagement with human rights: it is the exploitation of human rights language for strategic purposes.

The theoretical framework of "norm diffusion" and "norm entrepreneurs" developed by Finnemore and Sikkink, discussed in Part Three, helps explain why India's behavior matters beyond its specific votes. India's strategic size, its claim to represent the Global South, and its democratic identity give it unusual influence in international normative debates. When India treats sovereignty as an absolute value that prevents accountability for human rights violations, and when it uses its influence in multilateral forums to advance this position, it contributes to the diffusion of a norm of non-accountability that protects not only India but all the states that benefit from the fiction that domestic governance is immune from international scrutiny.

1.4 The Indus Waters Treaty in Abeyance: Water as a Weapon of War

One of the most alarming developments of 2025 in India's regional conduct was the decision by the Modi government to place the Indus Waters Treaty in abeyance following the Pahalgam attack and the subsequent armed conflict with Pakistan. The Indus Waters Treaty of 1960, brokered by the World Bank and negotiated over a period of seven years, is one of the most enduring examples of successful transboundary water governance in the world. It survived three wars between India and Pakistan, multiple periods of severe diplomatic tension, and decades of political conflict over Kashmir. Its suspension, even temporarily, represents a deeply alarming precedent.

The Indus Waters Treaty allocates the waters of the six rivers of the Indus system between India and Pakistan: India receives exclusive use of the three eastern rivers (Ravi, Beas, and Sutlej), while Pakistan receives exclusive use of the three western rivers (Indus, Jhelum, and Chenab),

with India retaining certain limited use rights on the western rivers for irrigation and hydropower development. The treaty established the Permanent Indus Commission, a bilateral mechanism for consultation and dispute resolution, and provided for third-party dispute resolution through a Neutral Expert and a Court of Arbitration under the World Bank's auspices.

Pakistan's agriculture is critically dependent on the western rivers covered by the treaty. The Indus, Jhelum, and Chenab collectively irrigate approximately eighty percent of Pakistan's cultivated land and support the livelihoods of hundreds of millions of people. Any significant reduction in flows from these rivers would be catastrophic for Pakistan's food security, water supply, and economic stability. The decision to place the treaty in abeyance, which India framed as a response to Pakistan's support for cross-border terrorism, is therefore not merely a diplomatic signal. It is a threat to the basic welfare of Pakistan's civilian population.

The international legal analysis of this decision is complex and contested. India has argued that Pakistan's material breach of its obligations under the Simla Agreement of 1972, which Pakistan formally suspended in response to Operation Sindoor, releases India from its own treaty obligations including the Indus Waters Treaty. This argument invokes the doctrine of exceptio non adimpleti contractus, the principle in contract law that a party's material breach releases the other party from its obligations, and its analog in international treaty law under Article 60 of the Vienna Convention on the Law of Treaties.

But Article 60(2)(c) of the Vienna Convention provides a critical limitation: a party may invoke a material breach as grounds for terminating or suspending a treaty only if the breach is of a provision "essential to the accomplishment of the object or purpose of the treaty." More significantly, Article 60(5) provides that the right to terminate or suspend a treaty for material breach does not apply to provisions "relating to the protection of the human person contained in treaties of a humanitarian character." This exception was specifically designed to prevent the use of treaty breach as a justification for denying humanitarian protections.

While the Indus Waters Treaty is not a "humanitarian treaty" in the strict sense, the consequences of its suspension for the welfare of Pakistan's civilian population engage the principles of international humanitarian law and human rights law directly. The right to water, which the UN General Assembly recognized as a fundamental human right in Resolution 64/292 of 2010, and the right to food, recognized in Article 11 of the ICESCR, both require that states not take actions that would foreseeably deprive civilian populations of access to water and food security. India's decision to place the treaty in abeyance, whatever its legal justification under treaty law, raises serious human rights concerns insofar as it threatens the water and food security of Pakistan's civilian population.

The Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, in communications issued in 2025, expressed concern that India's suspension of the treaty represented a threat to civilian welfare that was disproportionate to any legitimate security objective. The International Court of Justice, in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, held that the erga omnes obligation to respect the right of self-determination and fundamental human rights applies extraterritorially: states have obligations not only to respect rights within their

jurisdiction but to avoid violating rights of persons in other jurisdictions when their actions have direct effects on those persons. This principle applies with full force to India's management of shared water resources.

1.5 The Shimla Agreement Suspension and the Architecture of International Dispute Resolution

Pakistan's corresponding suspension of the Shimla Agreement, in response to India's actions following the Pahalgam attack, represents an equally alarming development with distinct but related international legal implications. The Shimla Agreement of July 1972, signed between Prime Minister Indira Gandhi and President Zulfikar Ali Bhutto following India's decisive victory in the 1971 war, established the framework for bilateral relations between India and Pakistan and committed both states to resolving their disputes "through bilateral negotiations or by any other peaceful means mutually agreed upon between them."

India has consistently relied on the Shimla Agreement to oppose any internationalization of the Kashmir dispute, arguing that the agreement mandates bilateral resolution and therefore excludes UN mediation or other third-party involvement. Pakistan's suspension of the agreement, which removes this bilateral framework for dialogue, leaves the management of one of the world's most dangerous territorial and political disputes without any agreed institutional mechanism. The implications for regional stability, for the rights of civilians on both sides of the Line of Control, and for the international legal order are serious.

The jurisprudence of the International Court of Justice on the law of treaties, and specifically on the effect of suspension of treaty obligations, provides relevant analytical tools. In the Nuclear Tests cases of 1974, the Court recognized that states can make legally binding commitments through unilateral declarations, a principle that has since been applied to bilateral treaty contexts. The Gabcikovo-Nagymaros case of 1997, in which the Court addressed the suspension of a bilateral treaty on a shared river, held that states have an obligation to negotiate in good faith toward a resolution even when specific treaty provisions are suspended, and that the suspension of treaty obligations does not release either party from its general obligations under international law including the principles of good neighborliness and equitable use of shared resources.

The suspension of both the Indus Waters Treaty by India and the Shimla Agreement by Pakistan in the context of the 2025 armed conflict represents a structural failure of the bilateral dispute resolution framework that had, despite its many limitations, provided a legal architecture for managing the most dangerous aspects of India-Pakistan relations. The reconstruction of that framework, if it is to occur, will require the kind of genuine political will and good-faith negotiation that the current political configurations in both countries make extremely difficult.

1.6 Democratic Peace Theory and Its Failure in South Asia

The democratic peace theory, which is one of the most empirically robust findings in international relations research, holds that democracies do not go to war with each other. The theory, developed from Immanuel Kant's essay "Perpetual Peace" published in 1795 and given contemporary empirical grounding by Michael Doyle in his 1983 articles on Kantian liberalism

and world politics, has been extensively tested and broadly supported by the historical record: while democracies fight wars with authoritarian states, they almost never fight wars with each other.

The 2025 armed conflict between India and Pakistan, which lasted four days and involved missile strikes, drone warfare, and significant military exchanges, does not technically constitute a "war" in the full sense, and Pakistan's democratic credentials are deeply contested given its long history of military dominance over civilian government. But the conflict does raise important questions about the application of democratic peace theory in South Asia and about the relationship between domestic democratic governance, regional stability, and human rights.

The BJP government's handling of the conflict illustrates several dimensions of this relationship. The political mobilization around Operation Sindoor was intensely nationalist, with the Hindu nationalist framing of the operation (Sindoor refers to the vermilion powder used in Hindu wedding ceremonies, and the name was explicitly chosen to evoke Hindu victimhood and martial response) serving domestic political purposes as much as military ones. The operation was presented in language that deliberately conflated the Pakistani state, the Pakistani military, Pakistani civilians, and Indian Muslims, creating an environment in which Islamophobic hate speech surged online and real-world violence against Indian Muslims intensified.

This pattern is precisely what democratic peace theory, in its Kantian formulation, would predict as a consequence of democratic regression. Kant's argument for the pacific tendency of republics rested not merely on the formal character of republican governance but on the substantive commitment to the rule of law, the separation of powers, and the rights of citizens that republican governance is supposed to embody. A republic that has undergone significant democratic backsliding, that suppresses minority rights domestically, that cultivates majoritarian nationalism as its political foundation, and that deploys military force in ways that are driven at least partly by domestic political considerations has lost the substantive character that democratic peace theory predicates as the source of inter-democratic peace. India's conduct in 2025 represents an experiment in democratic peace theory's limits when democratic norms are themselves under domestic pressure.

CHAPTER TWO: TRANSNATIONAL REPRESSION AND THE ASSASSINATION OF DISSIDENTS ABROAD

2.1 The Conceptual Framework: What Transnational Repression Means

Transnational repression is the practice by which states extend their repressive reach beyond their own borders to threaten, intimidate, harass, and in the most extreme cases kill individuals who are living in other countries. The concept was given systematic analytical form by Freedom House, which has maintained a Transnational Repression Database that tracks incidents across multiple countries and multiple modalities. The Freedom House framework identifies six primary modalities of transnational repression: targeted killings, unlawful rendition, digital transnational repression (hacking, surveillance, and online harassment), physical coercion by

proxy (using criminal organizations or diaspora community networks as coercive agents), legal mechanisms used as instruments of pressure (including Interpol red notices, extradition requests, and foreign asset freezing), and family-targeting in the home country to coerce dissidents abroad.

India's transnational repression activities, as documented through the Hardeep Singh Nijjar assassination in Canada and the foiled assassination plot against a Sikh American documented in the US Department of Justice indictments, involve at least three of these modalities: targeted killing, physical coercion by proxy (using criminal networks to execute the killings), and legal mechanisms (using UAPA designations as "terrorists" to delegitimize targets and facilitate other forms of pressure).

The philosophical analysis of transnational repression begins with the foundational concept of state sovereignty, which in its Westphalian formulation prohibits states from interfering in the domestic affairs of other states. A state that sends agents to kill individuals on the soil of another state is not merely violating international human rights law. It is violating the foundational principle of international order on which the post-1648 state system rests. It is claiming for itself the right to exercise lethal force in another state's territory without that state's consent, a claim that if universalized would make the international order ungovernable.

The jurisprudential tradition relevant to this analysis begins with the Caroline affair of 1837, in which British forces crossed the border into US territory to destroy a vessel being used to support a Canadian rebellion. The response of US Secretary of State Daniel Webster established what became the foundational principle of self-defense in international law: the threat must be "instant, overwhelming, and leaving no choice of means, and no moment for deliberation." The post-Charter international legal framework has further constrained self-defense under Article 51 of the UN Charter to situations involving an armed attack by a state, and the International Court of Justice's Nicaragua judgment of 1986 confirmed that support for non-state armed groups, even if substantial, does not constitute an armed attack justifying defensive force by the victim state against the supporting state.

The application of these principles to India's transnational repression is straightforward. The targeting of Sikh activists in Canada and the United States, including individuals who are citizens or permanent residents of those countries, on the basis that they advocate for Khalistan (Sikh independence), violates international law on multiple grounds. It violates the sovereignty of Canada and the United States, whose laws protect individuals on their soil from foreign state violence. It violates the right to life under the ICCPR and the Universal Declaration of Human Rights, which are applicable to all persons regardless of nationality. It violates the prohibition against extrajudicial killing under customary international law. And it violates the specific protections for human rights defenders, including the right to freedom of expression and political advocacy, under the UN Declaration on Human Rights Defenders.

2.2 The Nijjar Assassination: Facts, Investigation, and International Law

The assassination of Hardeep Singh Nijjar on June 18, 2023 outside the Guru Nanak Sikh Gurdwara in Surrey, British Columbia, where he served as president, is the central event in the public documentation of India's transnational repression activities. Nijjar was a Canadian citizen

of Indian origin who had been a prominent advocate for Khalistan, or an independent Sikh homeland. The Indian government had designated him as a "terrorist" under the UAPA and had issued extradition requests for him, which Canada had declined to honor, finding insufficient grounds for extradition under Canadian law.

The Royal Canadian Mounted Police, following an extensive investigation, determined that Nijjar's assassination was organized and directed by agents of the Indian government. Canadian Prime Minister Justin Trudeau made the explosive announcement in the House of Commons in September 2023, stating that Canadian intelligence had obtained credible evidence of the Indian government's involvement. The intelligence basis for this assessment included intercepted electronic communications among Indian diplomats and was shared with the other members of the Five Eyes intelligence partnership, including the United States, United Kingdom, Australia, and New Zealand. All five countries reportedly concluded that the assessment was credible.

India's response was one of categorical denial. The Indian government described Trudeau's allegations as "absurd," expelled a Canadian diplomat, demanded that Canada reduce its diplomatic presence in India, and suspended visa services for Canadians. The aggressive response to credible allegations of state-sponsored assassination was itself revealing: it followed the pattern that Freedom House describes as characteristic of states engaged in transnational repression, which typically respond to accountability processes with escalated pressure rather than cooperation.

The subsequent investigation produced concrete criminal evidence. In October 2023, the US Department of Justice unsealed an indictment against Nikhil Gupta, an Indian national charged with soliciting the murder of a Sikh American activist on behalf of an unnamed Indian government official who has been identified in subsequent reporting as a senior official in the Research and Analysis Wing (RAW), India's foreign intelligence agency. In October 2024, the DOJ unsealed a second indictment naming Vikash Yadav, a former RAW officer, as the government official directing the assassination plot. Three other Indian nationals were charged in Canada in connection with the actual execution of Nijjar's killing. In January 2025, the Hogue inquiry in Canada, which examined foreign interference in Canadian democratic processes, released findings that addressed the Nijjar case and its implications for Canadian security.

The UNHRC Special Rapporteur on extrajudicial, summary or arbitrary executions issued a communication to India in early 2025 expressing concern about the Nijjar assassination and characterizing India's conduct as a "systematic attack" on Sikh communities abroad, using transnational repression to silence dissent and employing UAPA designations as a mechanism of delegitimization that creates a legal and political environment facilitating the targeting of individuals. The UN Special Rapporteur's communication was notable for its directness: it did not equivocate about India's responsibility or treat the evidence as merely preliminary. It characterized India's behavior as a pattern of violations that implicated state responsibility under international law.

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2.3 The International Law of State Responsibility for Extraterritorial Killing

The international law framework governing state responsibility for extraterritorial killing is complex but unambiguous on the core questions raised by the Nijjar case and the foiled US plot. The International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts, adopted in 2001, codify the customary international law on state responsibility and provide the primary analytical framework.

Under Article 4 of the Articles on State Responsibility, the conduct of any state organ, which includes agencies and officials acting in an official capacity, is attributable to the state regardless of whether the organ or official exceeded their authority. If Vikash Yadav was acting in his capacity as a RAW officer when he directed the assassination plots, as the DOJ indictment alleges, his conduct is attributable to the Indian state under Article 4, regardless of whether higher levels of the Indian government authorized or were aware of the specific operations.

Under Article 8, conduct is attributable to a state if the person or entity carrying out the conduct was acting on the instructions of, or under the direction or control of, that state in carrying out the conduct. The DOJ indictments allege precisely this: that Gupta was acting on the instructions and under the direction of Yadav, who was himself acting as an agent of the Indian government. The "effective control" test established by the ICJ in Nicaragua and subsequently modified in other contexts applies here: the key question is whether the Indian state was exercising effective control over the specific operations in question.

Under Articles 14 and 15, responsibility for a continuing wrongful act persists as long as the act continues, and responsibility for a series of acts or omissions constituting an internationally wrongful act is established by reference to the series as a whole. The pattern of transnational repression activities documented against India, including multiple alleged assassination plots in different countries, constitutes a series of wrongful acts for which the Indian state bears continuing responsibility.

The diplomatic implications of established state responsibility for extraterritorial killing are significant. Under the Vienna Convention on Diplomatic Relations of 1961, diplomatic agents enjoy immunity from criminal prosecution in the receiving state, which is why Canada could not arrest and prosecute the diplomats implicated in Nijjar's killing. But the Convention also requires that diplomatic agents respect the laws and regulations of the receiving state and not interfere in the internal affairs of that state. The use of diplomatic premises and official representation as platforms for transnational repression operations violates Article 41 of the Vienna Convention and provides grounds for declaring the relevant individuals persona non grata, which Canada did by expelling six Indian diplomats.

The broader international legal issue is whether Canada and the United States have adequate legal mechanisms to hold India accountable for what is now well-documented state-sponsored conduct on their soil. The conventional mechanisms of diplomatic protest, expulsion of diplomats, and bilateral negotiations have proved insufficient to produce any change in India's behavior. Canada has sought assistance from India in the criminal investigation and has been met with obstruction. The United States, which has its own criminal indictments against Indian

government agents, was constrained in its response by the broader strategic relationship with India as a counterweight to China.

2.4 The Khalistan Question and the Politics of "Terrorist" Designation

The designation of Khalistan activists as "terrorists" under the UAPA is central to India's justification for its transnational repression activities. By designating individuals like Nijjar as terrorists, India created a legal framework that delegitimized them in the eyes of its own citizens and government, justified intelligence surveillance of their activities, and provided the ideological basis for arguing that Canada and the United States had an obligation to act against them. When those countries declined to act, India's security establishment appears to have decided to act unilaterally.

The UAPA's individual designation power, introduced by the 2019 amendments and discussed in Part One of this textbook, allows the Indian government to designate individuals as terrorists without any judicial determination and without providing reasons that can be tested in court. The UAPA's definition of "terrorist act" is broad enough to encompass peaceful political advocacy: it includes acts "intended to overawe the Government as by law established" or to "strike terror in the people." Under this definition, an individual who organizes a non-binding referendum on Sikh independence, which is what Nijjar was doing in cooperation with Sikhs for Justice, could be designated a terrorist for "striking terror" or seeking to "overawe the government."

The Human Rights Committee's General Comment 37 on the right of peaceful assembly, issued in 2020, makes clear that peaceful advocacy for political change, including advocacy for separatism or independence, is protected under Article 19 and Article 21 of the ICCPR. States cannot designate peaceful political advocacy as terrorism without violating these rights. The US and Canadian courts that declined to honor Indian extradition requests for Nijjar implicitly recognized this: the conduct for which India sought extradition did not constitute criminal offenses under Canadian or US law because it was constitutionally protected political speech.

India's framing of Khalistan advocacy as terrorism therefore reveals a broader pattern of using the terrorist designation as a tool of political repression. The same logic that designates Khalistan advocates as terrorists has been used to designate Kashmiri advocates of self-determination as terrorists, to designate journalists and academics who document state violence as terrorists (the Bhima Koregaon case), and to designate human rights defenders who criticize government policy as terrorists. The terrorist designation is not a legal determination made through a judicial process applying an objective standard. It is a political act that exempts the designated individual from the protections of law and creates a class of persons against whom any measures, including killing, can be presented as legitimate security responses.

The philosophical analysis of this pattern draws on the work of Giorgio Agamben, whose concept of the "state of exception" and the figure of "homo sacer" provides a theoretical framework for understanding how legal systems create categories of persons who are excluded from legal protection. In "Homo Sacer: Sovereign Power and Bare Life" published in Italian in 1995, Agamben argued that sovereignty consists precisely in the power to decide who falls within and who falls outside the protection of law: the homo sacer is the person who can be

killed without that killing constituting murder, because they have been stripped of legal personhood. The terrorist designation in Indian law functions as exactly this mechanism: it strips the designated individual of legal personhood, placing them outside the protection of both domestic and international law in the Indian state's view, and thereby legitimizing any action taken against them.

2.5 Diplomatic Immunity as a Shield for State Violence: The Structural Problem

The Nijjar case and the subsequent India-Canada diplomatic crisis revealed a structural problem in international law that extends far beyond this specific case: the system of diplomatic immunity, designed to protect diplomatic representatives from harassment and politically motivated prosecution by host states, has been weaponized by states engaging in transnational repression as a shield for their operations. As the Newstrail analysis observed, the legal architecture gives the issue its enduring force: diplomatic immunity prevents the host state from prosecuting the foreign agents involved in the violence, and the sending state's refusal to cooperate with investigations leaves the crime effectively unpunished.

The Vienna Convention on Diplomatic Relations was designed in a world in which states' concerns about diplomatic immunity were primarily about protecting their own diplomats from abuse by host governments, not about shielding their diplomats from accountability for crimes. The drafters did not contemplate a situation in which diplomatic premises would be used to organize assassinations of diaspora members, or in which diplomatic agents would serve as handlers for criminal networks conducting murders on behalf of intelligence agencies.

The reform of diplomatic immunity law to address transnational repression is a genuine international legal priority that has received insufficient attention. Several mechanisms are available: the creation of a treaty norm requiring states to facilitate criminal investigations in their territory when diplomatic personnel are implicated in serious crimes, with non-cooperation resulting in the automatic loss of immunity; the expansion of the crime of murder of a foreign national by a state agent to serve as a basis for universal jurisdiction, which would allow any state to prosecute such offenses regardless of where they occurred or the nationality of the perpetrator; or the referral of systematic transnational repression activities to the International Criminal Court as potential crimes against humanity when they are part of a widespread or systematic attack on a civilian population.

None of these reforms is imminent. But the Nijjar case has done more than any previous incident to put the issue of diplomatic immunity and transnational repression on the international legal agenda, and the India-Canada diplomatic crisis has demonstrated that even the strongest bilateral relationships can be severely damaged by a state's decision to export its authoritarian practices to its allies' soil.

2.6 India's Persecution of Diaspora Communities: A Broader Pattern

Beyond the specific assassination cases, India's treatment of its diaspora communities has exhibited a broader pattern of surveillance, intimidation, and coercive pressure that constitutes transnational repression in its softer modalities. The Freedom House Transnational Repression

Database has documented India as a significant perpetrator of digital transnational repression: the surveillance of diaspora social media accounts, the hacking of devices belonging to diaspora activists, and the use of sophisticated spyware against journalists and activists abroad.

The use of Pegasus spyware, developed by the Israeli NSO Group, against Indian journalists, activists, lawyers, and politicians was documented by an international consortium of journalists in the Pegasus Project investigation of July 2021. The investigation found that the Indian government had used Pegasus against at least three hundred Indian individuals including journalists, human rights lawyers, government critics, and politicians. Subsequent investigations extended the documentation: the forensic laboratory Citizen Lab at the University of Toronto documented Pegasus infections on devices belonging to multiple Indian journalists and civil society figures.

The extraterritorial dimension of this surveillance is significant. Pegasus has been found on devices belonging to individuals residing outside India, including journalists in the Indian diaspora who have reported on Indian government activities. The surveillance of journalists and activists who are not Indian nationals or who reside outside India's jurisdiction represents an extension of the authoritarian surveillance state beyond its legal territorial boundaries, violating the rights to privacy and freedom of expression of individuals who are under the legal protection of other states.

CHAPTER THREE: INDIA, RUSSIA, AND THE UKRAINE WAR: STRATEGIC AUTONOMY AND MORAL SILENCE

3.1 The India-Russia Relationship and Its Human Rights Dimensions

India's relationship with Russia is the most significant example of its strategic autonomy doctrine in practice, and the relationship that most clearly illustrates the human rights cost of that doctrine. Russia has been India's most important arms supplier for decades, with approximately fifty to sixty percent of India's military equipment having Russian origins. The relationship has deep historical roots in the Cold War non-aligned period, when Soviet support was crucial to India's industrialization and security positioning against Pakistan and China. In the post-Cold War period, the relationship has been maintained and in some respects deepened through the purchase of major weapons systems including the S-400 air defense system, submarines, aircraft carriers, and advanced fighter aircraft.

Russia's full-scale invasion of Ukraine on February 24, 2022 presented the most direct test of India's strategic autonomy doctrine and its human rights implications. The invasion has resulted in documented mass atrocities including the Bucha massacre, the bombing of civilian infrastructure, the systematic torture of prisoners of war, and the forced deportation of Ukrainian children to Russia, which the International Criminal Court found sufficient to issue arrest warrants for President Vladimir Putin and Children's Rights Commissioner Maria Lvova-Belova in March 2023. The UN Human Rights Monitoring Mission in Ukraine has documented

thousands of civilian deaths, tens of thousands of serious injuries, and widespread destruction of civilian infrastructure including hospitals, schools, and energy facilities.

India's response to these well-documented atrocities was to abstain on the UN General Assembly resolution of March 2 and March 24, 2022 condemning Russia's aggression and demanding immediate withdrawal, and to increase its purchases of Russian oil substantially, taking advantage of discounted prices resulting from Western sanctions. India's oil imports from Russia increased from approximately two percent of total imports before the invasion to approximately forty percent by 2023, providing Russia with billions of dollars in hard currency that directly subsidized its war effort. India also continued to purchase Russian military equipment and spare parts throughout the conflict.

India's official justification for these positions rested on three arguments. First, that India would not be "dragged into" a conflict that it regards as a product of NATO expansionism and Western geopolitical maneuvering, framing the Ukraine war as a great power conflict rather than as a war of aggression against a sovereign state. Second, that India's purchase of Russian oil serves the legitimate economic interest of its own population and that sanctioning Russia is a Western policy choice that India is not obligated to follow. Third, that India is using its relationship with Russia to advocate quietly for a negotiated settlement, positioning itself as a potential mediator.

The human rights analysis of these positions is unsparing. The argument that the Ukraine war is a product of NATO expansionism, even if accepted as partially accurate at the geopolitical level, does not address the human rights of Ukrainian civilians who are being killed, tortured, and displaced by Russian forces. The responsibility to protect doctrine, which the international community adopted at the World Summit in 2005 and which India formally accepted, recognizes that states have a responsibility to protect civilian populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and that the international community has a responsibility to act when states fail to do so. India's abstentions and its economic support for Russia contradict its accepted responsibilities under R2P.

The argument from economic self-interest is more politically potent but no more legally or morally persuasive. The principle established in the Nuremberg trials and subsequently codified in international law is that states cannot purchase or benefit from goods produced through slavery, pillage, or other serious violations of international humanitarian law. The application of this principle to purchases of Russian energy that subsidize an ongoing war of aggression is contested at the margins but clear at the core: systematic, large-scale purchases that provide substantial financial support to a state conducting documented war crimes make the purchasing state complicit in the conduct of those crimes, at least morally and potentially legally.

3.2 The Constructivist Analysis: Norms, Identity, and India's Silence on Ukraine

Alexander Wendt's constructivist international relations theory provides a useful framework for analyzing why India has maintained its position on Ukraine despite significant pressure from Western partners and despite the overwhelming evidence of Russian atrocities. Constructivism holds that states' behavior is shaped not only by material interests but by their identities, which are constructed through interaction with other actors and through the normative frameworks

within which states operate. India's identity as a non-Western, postcolonial, strategically autonomous state is a central element of its self-understanding, and this identity shapes how it perceives and responds to the Ukraine conflict.

From a constructivist perspective, India's silence on Russian atrocities in Ukraine is not simply a strategic calculation about oil prices and arms contracts. It is also an expression of a particular normative framework in which the primary norm is non-interference in the internal affairs of states and non-participation in great power conflicts. This framework, which has deep roots in the non-aligned movement and in India's colonial experience, interprets international accountability mechanisms, including the UN's response to Russian aggression, as extensions of Western hegemony rather than as expressions of universal principles. The fact that Western states supported the NATO intervention in Kosovo in 1999 without UN Security Council authorization, invaded Iraq in 2003 on false pretexts, and have not been held accountable for documented war crimes in Afghanistan, is used as evidence that international accountability is selectively applied and therefore not a genuinely universal norm.

The theoretical response to this argument draws on the work of Seyla Benhabib, particularly her account of democratic iteration and the evolution of normative principles in "The Rights of Others: Aliens, Residents and Citizens" published in 2004. Benhabib argues that universal norms do not need to be perfectly applied across all cases to retain their validity: the appropriate response to selective application is not to abandon the norm but to demand its consistent application. The fact that Western states have committed and continue to commit violations of international humanitarian law does not justify India's silence on Russia's violations in Ukraine. It does provide grounds for demanding that those Western states also be held accountable, which India would be in a much stronger position to do if it maintained consistent principled positions rather than strategic ones.

The broader problem is that India's strategic autonomy doctrine, whatever its origins in legitimate postcolonial critique of Western dominance in the international human rights system, has been transformed under the Modi government into a comprehensive resistance to any form of international accountability for any state including India itself. The postcolonial critique, in its authentic intellectual form, does not argue that powerful non-Western states should be immune from accountability for atrocities. It argues that accountability should be universal, consistent, and not weaponized for geopolitical purposes. India's actual behavior falls far short of this genuine standard.

3.3 India's Position on Gaza: Selective Solidarity and the Limits of Human Rights Discourse

India's initially equivocal and subsequently partial engagement with the human rights crisis in Gaza, created by Israel's military operations following the Hamas attack of October 7, 2023, illustrates further dimensions of the selective application of human rights principles in Indian foreign policy. India had developed strong and publicly celebrated strategic, technological, and defense ties with Israel under the Modi government, a relationship that reflected both geopolitical calculation (Israel as a supplier of advanced military technology, including the Heron surveillance drones used in Kashmir) and ideological affinity (the BJP's Hindu

nationalism and Israel's Zionist nationalism share certain structural characteristics, including an ethnoreligious conception of national identity and a securitization of minority communities).

After the Hamas attack of October 7, 2023, Prime Minister Modi publicly expressed solidarity with Israel, making India one of the few democracies to do so without simultaneously calling for restraint or the protection of civilian life. India voted against the UN General Assembly resolution of October 27, 2023 calling for a humanitarian truce in Gaza, a resolution supported by the overwhelming majority of UN member states including most Global South nations. India initially abstained on subsequent resolutions calling for a ceasefire before voting in favor of later ceasefire resolutions in 2024 and 2025 as the documented civilian death toll in Gaza exceeded fifty thousand.

India's initial position on Gaza, combined with its position on Ukraine, revealed the specific logic of its "strategic autonomy": autonomy from Western pressure on Russia, which conflicted with strategic and economic interests, combined with initial alignment with Israel, which served strategic, technological, and ideological interests. When neither strategic interests nor Western pressure required a principled position, India defaulted to strategic calculation rather than human rights principle.

The contradiction with India's Gaza position and its positions on Kashmir is particularly stark. India argues consistently that the Kashmir conflict is a bilateral matter between India and Pakistan that does not require international engagement, and that Indian security operations in Kashmir are responses to cross-border terrorism that are consistent with international law. The same logic could, and often does, justify Israel's characterization of its operations in Gaza as responses to terrorism that are internal security matters not requiring external accountability. India's initial alignment with Israel implicitly validated a logic that it does not want applied to its own conduct by the international community.

The theoretical framework of moral consistency in international relations, developed by scholars including Charles Beitz in "Political Theory and International Relations" published in 1979 and Thomas Pogge in "World Poverty and Human Rights" published in 2002, holds that a genuine commitment to human rights in international relations requires consistency across cases regardless of strategic interest. The application of different standards to Russia and to Israel, to Kashmir and to Palestine, to India's security operations and to comparable operations by other states, is not merely hypocritical. It actively undermines the coherence of the international human rights system by demonstrating that powerful states can invoke human rights language when it serves their purposes and dismiss it when it does not.

CHAPTER FOUR: INDIA AND CHINA: BORDER DISPUTES, HUMAN RIGHTS SILENCE, AND THE STRATEGIC CALCULATION

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4.1 The India-China Border Situation and its Human Rights Implications

The India-China border dispute, which has been a persistent feature of the bilateral relationship since the 1962 war, underwent a significant escalation in 2020 with the Galwan Valley clashes in which twenty Indian soldiers and an unknown number of Chinese soldiers were killed in hand-to-hand combat. The subsequent military standoff, which involved tens of thousands of troops on both sides positioned in close proximity in the Ladakh region, produced a partial disengagement agreement in 2021 and 2022 but left the fundamental territorial dispute unresolved.

The border dispute has direct human rights implications in multiple dimensions. In the Ladakh Union Territory, which India created in 2019 by reorganizing the former state of Jammu and Kashmir, the military buildup and associated infrastructure development have affected the livelihoods and land rights of local communities, including the Buddhist Ladakhi community and Tibetan refugee communities. The displacement of nomadic herders from traditional pasture lands that are now in contested border areas is a documented problem that receives minimal attention because the communities affected are small and politically marginal.

More significantly, India's strategic relationship with China shapes India's willingness to criticize China's documented human rights atrocities in Xinjiang and Tibet. The UN Human Rights Office released a report in August 2022 finding that China's treatment of Uyghur Muslims in Xinjiang may constitute "international crimes, in particular crimes against humanity." The report documented arbitrary detention, torture, forced labor, family separation, and severe restrictions on religious and cultural practices affecting at least one million Uyghurs and other Turkic Muslims. This is among the most serious and well-documented ongoing human rights crises anywhere in the world.

India's response to this documentation has been, characteristically, silence. India did not sign the international statement calling on China to address the human rights situation in Xinjiang that was issued at the UN Human Rights Council in October 2022. India has not made any bilateral representation to China on the Xinjiang situation. India's diplomatic engagement with China has focused exclusively on bilateral security and economic issues, with no meaningful human rights dimension.

The instrumentalization of human rights in India's foreign policy is illustrated by the contrast between India's vocal characterization of Chinese actions in Tibet and Xinjiang in domestic political contexts, where they can be used to justify defense spending and strategic positioning, and India's silence in international forums where criticism of China would require principled consistency and might complicate the tactical disengagement negotiations. The domestic audience hears one message and the international audience sees different behavior, a bifurcation that is characteristic of states that use human rights discourse as a tool of political communication rather than as a genuine normative commitment.

4.2 The Tibet Question and India's Historical Role

India's relationship with Tibet has particular historical significance for the global human rights record. India was the primary destination for the Tibetan government in exile following China's

military occupation of Tibet and the flight of the Dalai Lama to Dharamsala, India in 1959. India has hosted the Tibetan government in exile for over sixty years, and the Dalai Lama has been a resident of India throughout this period.

This hosting, while genuinely significant as an act of humanitarian accommodation, has been managed by India in ways that reflect strategic calculation rather than principled commitment. India has consistently discouraged the Tibetan government in exile from taking positions that might antagonize China excessively, has imposed limitations on the diplomatic activities of the Tibetan administration, and has generally treated the Tibetan issue as a bargaining chip in its relationship with China rather than as a human rights matter requiring principled advocacy.

The treatment of Tibetan refugees in India also illustrates the limits of India's humanitarian commitments. Tibetan refugees in India do not have legal refugee status under Indian law because India is not a party to the 1951 Refugee Convention or its 1967 Protocol. They exist in a legal grey zone: tolerated but not formally recognized, dependent on bureaucratic goodwill rather than legal entitlement for their continued residence. The absence of a formal legal status makes Tibetan refugees in India vulnerable to the same administrative pressures that affect other undocumented populations: insecurity of residence, limited access to formal employment, restricted access to educational institutions, and dependence on the political goodwill of successive Indian governments.

The theoretical framework of non-refoulement, which is the prohibition on returning persons to countries where they face serious persecution, is recognized as a norm of customary international law binding on all states regardless of their treaty commitments. India's obligations under the principle of non-refoulement prevent it from forcibly returning Tibetan refugees to China, a commitment that India has generally honored in practice. But the failure to provide legal status and formal recognition is itself a violation of the spirit if not the strict letter of the non-refoulement principle, because it creates conditions of ongoing legal vulnerability that can be used as leverage to pressure individuals into accepting unsafe returns.

4.3 India and the Rohingya: A Case Study in Refugee Non-Protection

India's treatment of Rohingya refugees from Myanmar represents one of the most disturbing examples of the failure of India's international human rights obligations. The Rohingya are a predominantly Muslim ethnic minority from Myanmar's Rakhine State who have been subjected to systematic persecution by the Myanmar government and military, culminating in the 2017 military operations that the UN Fact-Finding Mission described as bearing the hallmarks of genocide. Approximately seven hundred thousand Rohingya fled to Bangladesh in 2017 alone, and significant numbers of refugees reached other countries including India.

Approximately forty thousand Rohingya refugees are estimated to be present in India, concentrated primarily in Jammu and Kashmir, Delhi, Hyderabad, and other major cities. India's approach to these refugees has been one of active hostility. The government has characterized Rohingya refugees as illegal immigrants posing a national security threat, has instituted procedures for their detention and deportation, and has taken steps to prevent additional Rohingya from entering India.

In 2017, the Ministry of Home Affairs issued directives to state governments to identify and deport Rohingya refugees, despite the UN High Commissioner for Refugees having registered approximately sixteen thousand of them as refugees under its mandate. Deportation to Myanmar, where they face persecution and potential genocide, would constitute a fundamental violation of the non-refoulement principle. The Supreme Court of India, in Mohammad Salimullah v. Union of India, declined to issue a direction preventing deportations in 2017, accepting the government's security framing without adequate engagement with the international law obligations at stake.

The Immigration and Foreigners (Exemption) Order of 2025, noted in Amnesty International's November 2025 analysis, extended and systematized the legal architecture for identifying and detaining alleged "illegal foreigners" on a national scale, replicating the Assam Foreigners Tribunals system that has been used to render thousands of Indian citizens stateless. The expansion of this system creates additional risks for Rohingya and other refugee populations, who may be caught in the system's net regardless of their refugee status.

The theoretical framework of Hannah Arendt's concept of "the right to have rights," developed in "The Origins of Totalitarianism" published in 1951, is particularly resonant in the Rohingya context. Arendt argued that stateless persons, stripped of the legal protection of any state, face a condition of "absolute rightlessness": they have no community whose laws protect them and no institutional framework capable of vindicating their rights. The Rohingya's situation in India precisely illustrates this condition: persecuted in their country of origin, not recognized as refugees under Indian law, characterized as security threats, and subject to deportation back to the very conditions that compelled their flight. The international human rights system's failure to protect them is compounded by India's active choice to disregard its non-refoulement obligations.

CHAPTER FIVE: INDIA AND MULTILATERAL INSTITUTIONS: THE POLITICS OF NORM CONTESTATION

5.1 India at the G20: Soft Power, Hard Realities

India's G20 presidency in 2023, which it used to host the New Delhi Summit in September of that year, represented the high point of the Modi government's soft power agenda: presenting India to the world as a rising global power, a voice for the Global South, a technology hub, and a democracy that works. The summit was accompanied by extraordinary visual spectacle, including the use of the G20 branding across Indian cities and the projection of India's ancient civilizational heritage through the summit's aesthetics. Prime Minister Modi secured the admission of the African Union as a full G20 member, a gesture toward the Global South that was widely praised.

But the substance of the G20 presidency, and the political context in which it occurred, revealed the contradictions in India's global positioning. The New Delhi Summit's communique was carefully crafted to avoid any direct condemnation of Russia's war in Ukraine, instead referring

to "the war in Ukraine" without attribution of responsibility, a significant retreat from the Bali Summit communique of 2022 which had noted that "most members condemned the war." This outcome served Russia's interests and was secured partly through India's mediation, which India presented as evidence of its diplomatic skill but which critics characterized as the use of India's presidency to shield an aggressor from accountability.

The summit occurred in a context in which dozens of Indian civil society organizations that would normally have participated in G20 civil society processes had been suppressed through FCRA cancellations and UAPA prosecutions. The C20 (Civil Society 20) process, which accompanies every G20 presidency and is supposed to provide civil society input into G20 deliberations, was marked by limitations on the participation of Indian civil society groups critical of the government's policies, raising questions about the genuineness of the "inclusive" framing that India placed on its presidency.

The theoretical framework of "cosmopolitan democracy" developed by David Held in "Democracy and the Global Order" published in 1995 provides a lens through which India's G20 presidency can be evaluated. Held argues that genuine democratization of international governance requires not merely the participation of states but the meaningful engagement of civil society, the protection of individual rights against abuse by states, and the accountability of international institutions to the people affected by their decisions. India's G20 presidency, which projected a democratic image while suppressing the domestic civil society that would give substance to that image, falls far short of Held's cosmopolitan democratic standard.

5.2 BRICS Expansion and India's Position in the New Multipolarity

India's participation in BRICS, the grouping of Brazil, Russia, India, China, and South Africa, and its engagement with the expanded BRICS Plus format that admitted Iran, Ethiopia, Egypt, Saudi Arabia, and the United Arab Emirates in 2024, illustrates another dimension of the strategic autonomy doctrine. BRICS represents India's attempt to maintain its voice in what it characterizes as a "multipolar" world order: a world in which power is distributed among multiple major actors rather than concentrated in Western-led institutions.

The expanded BRICS now includes states with deeply problematic human rights records: Russia, which is conducting a war of aggression in Ukraine; Iran, which executed hundreds of political prisoners in 2022-2023 and suppressed the "Woman, Life, Freedom" movement with lethal force; Saudi Arabia, which conducted the extrajudicial killing of journalist Jamal Khashoggi in 2018 and maintains one of the world's most repressive domestic legal orders; and Ethiopia, which has been engaged in a civil war in Tigray that has resulted in documented mass atrocities. India's enthusiastic participation in a grouping that includes all of these states, without any meaningful human rights conditionality, is a statement about the place of human rights in India's multipolar vision: it has no place.

The theoretical framework relevant to this analysis is the concept of "authoritarian diffusion" developed by scholars including Seva Gunitsky in "Aftershocks: Great Powers and Domestic Reforms in the Twentieth Century" published in 2017, and more recently analyzed in the context of the post-2015 democratic recession by scholars including Steven Levitsky and Lucan Way in

"The Rise of Electoral Authoritarianism" and related works. Authoritarian diffusion describes the process by which authoritarian practices, norms, and institutional models spread from one state to others through multiple mechanisms: demonstration effects, material assistance, diplomatic protection, and the development of shared ideological frameworks.

The concern with India's BRICS engagement and its broader positioning in the multipolar world order is that it contributes to authoritarian diffusion by signaling that states can pursue economic development, regional influence, and international legitimacy without meaningful commitment to human rights. When India presents itself as a model of development that combines economic growth with strategic autonomy and does not require the "Western" constraints of independent civil society, press freedom, or minority rights, it implicitly validates the authoritarian developmental models of its BRICS partners.

The SCO summit held in Tianjin, China in August and September 2025 brought together the leaders of China, Russia, India, Pakistan, Iran, and several Central Asian states, representing a gathering of some of the world's most significant human rights violators in a setting that explicitly celebrated cooperation and multipolarity. India's participation, alongside states that are conducting mass atrocities, interning religious minorities, and suppressing democratic movements, is a statement about India's vision of the world order: one in which sovereignty, development, and strategic interest take priority over the rights of human persons.

5.3 India and the International Criminal Court: Non-Participation as Strategic Choice

India's non-ratification of the Rome Statute of the International Criminal Court, which was discussed briefly in Part Three, deserves extended treatment in the context of India's broader multilateral positioning. The ICC is the primary international mechanism for holding individuals accountable for the most serious international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. India's decision not to join the Court, which it has maintained since the Rome Conference of 1998, is a deliberate strategic choice with significant implications.

India's stated objections to the Rome Statute have varied over the years but have consistently included concerns about the Court's potential impact on Indian security operations in Kashmir and the Northeast, concerns about the inclusion of the crime of aggression (which India feared could be applied to defensive operations), and a general concern that the Court could be used as a political tool by Western powers against non-Western states. These concerns are not entirely without foundation: the ICC has been criticized for focusing disproportionately on African situations in its early years, and the United States, Russia, and China are also non-parties.

But the consequence of non-participation is that Indian nationals cannot be held accountable by the ICC for crimes within its jurisdiction committed on Indian territory unless the UN Security Council refers the situation to the Court. Given India's strategic relationships with the P5 members, particularly Russia and China, and its improving relationships with the United States, a Security Council referral of an Indian situation is essentially impossible. This provides India with a structural immunity from ICC accountability that it has consciously chosen to maintain.

The human rights significance of ICC non-participation extends beyond the specific question of accountability for past crimes. The Rome Statute creates a comprehensive framework of international criminal law that shapes how states construct and conduct military operations, police activities, and counter-insurgency measures. States that are parties to the Statute face legal constraints on their operations, including the need to comply with the definitions of war crimes and crimes against humanity that the Statute codifies. States that are non-parties face no such constraints in the ICC framework, though they remain bound by the customary international law that the Statute largely reflects.

India's decision to remain outside the Rome Statute framework is therefore also a decision to remain outside the comprehensive system of international criminal law constraints that the Statute creates. This decision is consistent with India's maintenance of AFSPA and its practice of systematic impunity for security forces: a state that has institutionalized immunity for its security forces domestically has strong incentives to resist the international criminal law framework that would create parallel accountability.

The philosopher John Rawls, in "The Law of Peoples" published in 1999, which extended his liberal political theory to international relations, argued that a liberal international order requires states to maintain a minimal set of commitments to human rights and to international institutions that enforce them. Rawls's account of "decent peoples," as distinct from "liberal peoples," sets a minimal threshold: states need not be liberal democracies to be acceptable participants in the international order, but they must maintain basic human rights protections and must not pursue aggressive war or support armed groups that commit atrocities. India's conduct, measured against Rawls's minimal standard, falls short in multiple respects: its security forces commit atrocities with impunity, its intelligence apparatus conducts extraterritorial assassinations, and its regional conduct includes economic coercion and water weaponization.

5.4 India's Engagement with the Human Rights Council: Elected Without Accountability

India's October 2025 election to the Human Rights Council for the 2026-2028 term, achieved despite its deteriorating domestic human rights record, illustrates the structural failure of the HRC's membership selection process. The HRC was created in 2006 to replace the Commission on Human Rights, which had been widely criticized for allowing states with poor human rights records to gain membership and use it to shield themselves from accountability. The HRC's founding resolution (UNGA Resolution 60/251) requires that member states "uphold the highest standards in the promotion and protection of human rights" and "fully cooperate with the Council."

India's membership is a test of whether these requirements have any practical content. India has nineteen pending visit requests from UN Special Procedures, including the twenty-five-year-old request from the Special Rapporteur on torture. India has not implemented the recommendations of the Human Rights Committee's July 2024 concluding observations on its ICCPR compliance. India's National Human Rights Commission has been recommended for downgrading from "A" to "B" status due to political interference. India has used its HRC membership to block accountability for states with which it has strategic relationships.

The theoretical analysis of the HRC's structural failures has been developed by scholars including Rosa Freedman in "The United Nations Human Rights Council: A Critique and Early Assessment" published in 2013 and updated in subsequent work. Freedman argues that the HRC's fundamental weakness is the absence of meaningful criteria for membership selection and the absence of effective mechanisms for holding members accountable to the standards their membership is supposed to demonstrate. The diplomatic culture of the HRC rewards participation and coalition-building rather than rights performance, creating incentives for states to invest in multilateral positioning rather than domestic accountability.

The reform proposals that have emerged from this analysis include: the creation of a peer review mechanism for HRC membership candidates that is independent of regional group political calculations; the development of defined benchmarks for HRC member performance that are regularly assessed; the creation of a mechanism for suspending HRC members who are found to be in serious violation of their membership obligations; and the strengthening of the relationship between HRC membership and compliance with treaty body recommendations and special procedure requests.

None of these reforms has been implemented, and India's continuing membership despite its deteriorating record demonstrates precisely the structural failure that these reforms would address.

CHAPTER SIX: INDIA'S CLIMATE POLICY AS A HUMAN RIGHTS ISSUE

6.1 Climate Change, India, and the Rights of the Most Vulnerable

The relationship between climate change and human rights is well-established in international law and in the jurisprudence of multiple courts. The UN Human Rights Committee's General Comment 36 on the right to life, adopted in 2019, explicitly recognizes that the degradation of the natural environment poses a serious threat to the effective enjoyment of the right to life, and that environmental degradation, climate change, and unsustainable development constitute present threats to the ability of both present and future generations to enjoy the right to life. The UN General Assembly recognized the human right to a clean, healthy, and sustainable environment in Resolution 76/300 of July 2022.

India's position in the global climate change conversation is complex. India is the world's third largest emitter of greenhouse gases in absolute terms, though its per capita emissions remain well below those of the major developed countries. India has made commitments under the Paris Agreement to achieve net zero by 2070 and to meet fifty percent of its energy needs from non-fossil sources by 2030. The Amnesty International 2025 report noted that the Climate Action Tracker rated India's climate targets and policies as "highly insufficient," stating that they were inconsistent with the 1.5 degrees Celsius temperature increase limit, and that India ranked 23rd in the 2025 Climate Change Performance Index, slipping thirteen places due to continued reliance on coal and limited fossil fuel phase-out policies.

The human rights significance of India's climate policy failures is not merely a matter of global emissions arithmetic. India is itself one of the countries most severely affected by climate change, and the populations most affected are overwhelmingly from the same marginalized communities, Dalits, Adivasis, coastal fisherfolk, farmers in rain-dependent agriculture, that are subjected to other forms of human rights violation. The escalating pattern of extreme heat events, with significant parts of India experiencing temperatures exceeding forty-five degrees Celsius for extended periods, affects agricultural laborers, construction workers, rickshaw pullers, and others who work outdoors and who cannot afford the protections that wealth provides against heat. These are overwhelmingly people from lower-caste and minority communities.

The displacement of communities by climate-related flooding, particularly in states like Assam and Bihar, compounds existing vulnerabilities. Adivasi communities whose land has not been legally recognized are particularly vulnerable to displacement by flooding because they have no legal title to contest the loss of their land. Coastal communities dependent on fishing face the loss of livelihoods as fish populations shift and as coastal erosion accelerates. The entire Sundarbans region, which straddles the India-Bangladesh border and is home to millions of people, faces progressive inundation as sea levels rise.

6.2 India's Forest and Land Policy: Development-Induced Displacement as Climate Injustice

India's forest and land policies, examined in Part One in the context of Adivasi rights and the Maoist conflict, have a climate justice dimension that deserves separate analysis. The systematic clearing of forests for mining, infrastructure, industrial, and agricultural development projects contributes both to India's greenhouse gas emissions and to the vulnerability of the communities that depend on forests for their livelihoods and cultural survival.

The Forest Rights Act of 2006 was designed to provide legal protection to forest-dwelling communities and to recognize their role as stewards of forest ecosystems. Its inadequate implementation means that forest-dwelling communities continue to be displaced without legal protection, and the forests they would have protected continue to be cleared without the community oversight that the Act was designed to create. The connection between community rights, forest protection, and climate change is well-established in the international literature: communities with recognized rights over their forests maintain better forest cover than state-managed forests. The failure to implement the Forest Rights Act is therefore not only a human rights violation but a failure of climate governance.

India's Coal India Limited, the state-owned coal mining company, is the world's largest coal producer by volume. The expansion of coal mining, which the Modi government has actively promoted in the name of energy security and economic development, involves the displacement of forest-dwelling communities, the destruction of forest ecosystems, and the production of emissions that contribute to climate change. The communities most directly affected are Adivasi communities in the coal-bearing states of Chhattisgarh, Jharkhand, Odisha, and Madhya Pradesh. These are the same communities whose land rights are systematically denied, whose leaders are designated as Maoists and prosecuted under UAPA, and whose protests against displacement are met with security force operations.

The climate justice framework, developed by scholars including Henry Shue in his updated work on "basic rights" in the climate context, Saleemul Huq through his work on loss and damage, and Rob Nixon in "Slow Violence and the Environmentalism of the Poor" published in 2011, identifies this pattern as a form of environmental injustice: the benefits of development are concentrated among the wealthy and connected, while the costs, including the human rights costs of displacement and the climate costs of carbon emissions, are borne disproportionately by the poor and marginalized.

Nixon's concept of "slow violence," which he defines as violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, is particularly applicable to India's climate-related violations. The deaths caused by extreme heat, the loss of agricultural livelihoods due to changing monsoon patterns, the displacement of coastal communities by sea-level rise, the destruction of forests through development-induced clearing, these do not register as human rights violations in the conventional sense because they do not have a specific perpetrator making a specific decision at a specific moment. But they are the predictable and documented consequences of policy choices for which the Indian state bears responsibility.

CHAPTER SEVEN: INDIA'S ARMS EXPORTS, MILITARY DIPLOMACY, AND HUMAN RIGHTS

7.1 India as Emerging Arms Exporter: The Human Rights Dimension

India has, under the Modi government, made significant efforts to develop its domestic defense production and to establish itself as an arms exporter. The government's "Make in India" initiative in defense has been supported by liberalization of the foreign direct investment framework for defense manufacturing, the creation of two defense corridors in Uttar Pradesh and Tamil Nadu, and the establishment of ambitious export targets. India's arms exports have grown significantly from a very low base, with exports of defense equipment increasing from approximately two hundred million USD in the 2016-17 period to over two billion USD by 2023-24.

The human rights analysis of arms exports examines whether weapons and military equipment exported by one state end up being used to commit human rights violations by the receiving state. India's arms exports, while still small by global standards, are directed toward states with mixed or poor human rights records. India exports military equipment to Myanmar (prior to the 2021 coup and the subsequent military crackdown), Sri Lanka (which used Indian military assistance during the final phase of the civil war against the LTTE, when well-documented war crimes occurred), Armenia (which is engaged in a territorial dispute with Azerbaijan over Nagorno-Karabakh), and various African states.

India does not have a comprehensive arms export control law that applies human rights criteria to export licensing decisions. The existing export control framework, under the Foreign Trade (Development and Regulation) Act and associated regulations, focuses on national security and

non-proliferation considerations rather than human rights. There is no requirement to assess the likelihood that exported weapons will be used to violate human rights, no transparency mechanism requiring publication of export licenses and recipient states, and no parliamentary oversight mechanism for arms export decisions.

The Arms Trade Treaty of 2014, the first international treaty to regulate the conventional arms trade, specifically requires states parties to assess whether exported arms will be used to commit violations of international humanitarian law or international human rights law. India is not a signatory to the Arms Trade Treaty, a non-accession that is consistent with its broader resistance to international accountability mechanisms and that leaves it without the legal framework for human rights scrutiny of arms exports that the treaty would require.

7.2 India's Military Presence in the Indian Ocean and Human Rights

India's expanding naval presence in the Indian Ocean Region, which is a centerpiece of its strategic engagement with Western partners and particularly the Quadrilateral Security Dialogue (the "Quad" with the United States, Japan, and Australia), has human rights dimensions that are not typically foregrounded in strategic analysis. The Indian Navy's operations in the Indian Ocean involve engagement with the maritime security challenges of the region, including counter-piracy operations, humanitarian assistance, and surveillance. These operations take place in a region that includes some of the world's most severe humanitarian crises, including the conflict in Yemen and the situation of Rohingya refugees in the Bay of Bengal.

India's role in Quad security cooperation, which emphasizes a "Free and Open Indo-Pacific" and primarily serves the strategic purpose of countering Chinese naval expansion, has been presented as contributing to regional security and stability. The human rights analysis asks a more specific question: does India's participation in Quad security cooperation include any meaningful engagement with the human rights dimensions of regional security, including the protection of refugees and migrants, the accountability of Quad partners for their own human rights violations, and the development of maritime governance frameworks that protect human dignity?

The answer, to the extent that information is available, is essentially negative. Quad security cooperation is primarily a military and intelligence-sharing framework focused on traditional security concerns, without significant human rights content. The "Quad Plus" frameworks and associated diplomatic activities have occasionally addressed humanitarian concerns but in ways that are incidental rather than structural.

The comparison with the European Union's approach to maritime security, which at least nominally includes human rights obligations for EU member states in maritime operations (though the EU's actual treatment of migrants in the Mediterranean has been extensively criticized), suggests that India's Quad engagement could, in principle, incorporate human rights frameworks. The absence of any such incorporation is a choice, not a necessity.

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CHAPTER EIGHT: INDIA AND THE GLOBAL SOUTH: LEADERSHIP CLAIMS AND HUMAN RIGHTS DEFICITS

8.1 India as Voice of the Global South: The Rhetorical Claims

Under the Modi government, India has significantly increased its claims to represent the interests and perspectives of the Global South in international forums. The G20 presidency was framed explicitly as an opportunity to amplify Global South voices. India's Voice of the Global South Summit, held virtually in January and November 2023, brought together over one hundred developing countries for consultations about development, debt, climate finance, and global governance reform. India's advocacy for African Union membership in the G20 was presented as a concrete step toward Global South empowerment.

These rhetorical claims to Global South leadership rest on a narrative in which India, as the world's largest developing democracy, former colonial subject, and home to the world's largest poor population, has a special understanding of and commitment to the interests of developing countries. The narrative is not without some basis: India has genuine experience with development challenges, has contributed significantly to South-South technical cooperation, and does occupy a distinctive position in the international system that is different from both established Western powers and China.

But the human rights analysis of India's Global South leadership claims reveals profound contradictions. The states of the Global South whose interests India claims to represent include many that are struggling with human rights challenges not unlike India's own: authoritarian governance, minority persecution, press repression, and impunity for security forces. India's leadership of the Global South in these respects offers not an alternative model of rights-respecting development but a validation of the authoritarian developmental model that India is increasingly embodying.

The philosopher Rahel Jaeggi, in "Critique of Forms of Life" published in German in 2014 and in English in 2018, develops an account of immanent critique that is particularly useful here. Jaeggi argues that genuinely transformative critique proceeds from within the normative framework of the subject being criticized, showing how that framework fails to live up to its own standards. India's Global South leadership claims invoke standards of development justice, decolonization, and democratic empowerment that are the normative framework of postcolonial politics at its best. The immanent critique demonstrates that India fails catastrophically to live up to these standards in its treatment of its own population: a state that dispossesses Adivasis for corporate mining projects cannot credibly lead a Global South agenda for just development; a state that suppresses civil society through FCRA cannot credibly advocate for civil society participation in global governance; a state that systematically violates the rights of its Muslim minority cannot credibly speak for the Muslim-majority states of the Global South.

8.2 The South-South Technical Cooperation and Human Rights Transfer

India's substantial program of South-South technical cooperation, which operates through the Indian Technical and Economic Cooperation (ITEC) program and various bilateral development

assistance frameworks, involves the transfer to developing countries of technical knowledge, training, and institutional models in areas including governance, security, and law enforcement. This dimension of India's international engagement has received limited scrutiny from a human rights perspective.

The training of police and security forces from other developing countries by Indian police and security agencies raises specific concerns. Indian police practices, as documented throughout this textbook, include systematic torture, custodial killing, and the suppression of minority communities and political dissent. The export of Indian policing models to other developing countries through ITEC training programs may contribute to the diffusion of these practices, particularly in states that are themselves facing challenges of ethnic or religious diversity and political opposition.

This concern is not merely theoretical. India's counterterrorism training programs, which are offered to multiple countries in South Asia, Southeast Asia, and Africa, are built on the Indian counterterrorism framework that includes the UAPA, the use of detention without trial, and the conflation of political activism with terrorism. The export of this framework, packaged as "best practice" in counterterrorism cooperation, risks diffusing the repressive elements of India's approach to states that may apply them against their own minorities and dissidents.

The concept of "repression diffusion" in comparative politics, analyzed by scholars including Killian Clarke and Korhan Kocak in "Launching Revolution" published in 2020, examines how repressive practices spread across states through multiple channels including military and police training, intelligence sharing, and diplomatic normalization of specific practices. India's growing role as a provider of security sector assistance and training in the Global South positions it as a potential diffuser of its repressive practices, a role that has received insufficient attention in analyses of India's foreign policy and international influence.

CHAPTER NINE: THE DOCTRINE OF RESPONSIBILITY TO PROTECT AND INDIA'S SELECTIVE ENGAGEMENT

9.1 R2P: The Theory and India's Formal Commitment

The Responsibility to Protect doctrine, unanimously adopted at the World Summit in 2005 and endorsed by the UN Security Council in Resolution 1674 of 2006, holds that states have a primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and that the international community has a responsibility to help protect populations when states fail to do so or are themselves responsible for atrocities. The doctrine was a significant conceptual development in international law because it formally qualified the absolute principle of state sovereignty with a responsibility dimension: sovereignty is not merely a right to non-interference but also a responsibility to protect.

India was a negotiating party to the 2005 World Summit Outcome and formally accepted the R2P doctrine as part of the Summit consensus. India's subsequent positions on R2P have been

characterized by what the Australian scholar Gareth Evans, one of R2P's principal architects, has called "selective skepticism": accepting the doctrine's first pillar (state responsibility) while resisting its second pillar (international assistance) and actively opposing its third pillar (collective international action) in most concrete applications.

The human rights implications of India's selective engagement with R2P are twofold. First, India's own domestic conduct raises legitimate questions about whether India is meeting its own R2P obligations. The Manipur crisis, in which inter-community ethnic violence killed hundreds and displaced tens of thousands with the state government appearing to side with the dominant community, raises precisely the questions about state failure to protect civilian populations that R2P was designed to address. The systemic denial of rights to Dalits, the targeted violence against Muslims, and the security force atrocities in Kashmir all engage India's primary R2P obligation.

Second, India's resistance to international engagement under R2P's third pillar shields other states from accountability for atrocities. India opposed the UN Human Rights Council resolution establishing an inquiry into the Sri Lankan civil war atrocities in 2009, contributing to the delay in accountability that has persisted to the present. India was cautious about supporting UNSC action in Libya in 2011, which produced the controversial NATO intervention. India has consistently opposed using R2P as a basis for international action in situations where it has strategic interests in the target state.

9.2 The Philosophical Debate About R2P and Sovereignty

The philosophical debate about R2P cuts across traditional disciplinary boundaries and engages some of the most fundamental questions in political philosophy about the nature of sovereignty, the moral status of states, and the claims of universal human rights against particular political communities.

The traditional Westphalian conception of sovereignty, associated with philosophers like Jean Bodin and Thomas Hobbes, treats sovereignty as the supreme, undivided, and inalienable power of the state over its territory and population. On this conception, sovereignty is both a legal right (the right to non-interference) and a functional capacity (the ability to maintain order and govern effectively). The Westphalian order that emerged from the 1648 Peace of Westphalia established non-interference as a foundational principle of international relations precisely because the alternative, a world in which states could legitimately intervene in each other's affairs on moral grounds, was seen as leading inevitably to endless wars of religion and ideology.

R2P represents a direct challenge to this conception. By making sovereignty conditional on the fulfillment of a protective responsibility, R2P proposes what its advocates call a "thick" rather than "thin" conception of sovereignty: sovereignty as responsibility rather than sovereignty as power. The philosophical basis for this move draws on the social contract tradition: if the state's legitimacy derives from its role in protecting its citizens, then a state that actively persecutes or fails to protect its citizens has forfeited its claim to the non-interference protection that sovereignty provides.

India's resistance to R2P's operational implications rests partly on a genuine postcolonial concern that R2P will be weaponized by powerful states for imperial purposes. The Libya intervention of 2011, which was initially authorized under R2P and resulted in regime change and the creation of a failed state, is regularly cited by India and other Global South states as evidence that R2P is easily abused. This concern is not without foundation: the history of "humanitarian intervention" includes many cases in which genuinely humanitarian rhetoric was used to advance strategic interests.

But the alternative to a potentially abusable R2P is not a world in which states freely massacre their own populations without international response. It is a world governed by the modified Westphalian principle that Michael Walzer articulated in "Just and Unjust Wars" published in 1977 and its subsequent editions: states have a right to non-interference, but this right is forfeited when the state commits "obvious and flagrant violations of human rights" on a massive scale. The challenge for international law is to develop criteria for when the sovereignty principle yields to the protection principle that are genuinely universal in their application, not weaponized for the interests of powerful states.

India's contribution to this debate has been to resist the development of such criteria while claiming the non-interference protection of sovereignty for its own conduct. This posture is intellectually inconsistent: either sovereignty is a right that yields to fundamental human rights protections or it is not. If it is, then India must accept the logical implication that its own conduct in Kashmir, Manipur, and in relation to its Dalit and Muslim communities might in extreme cases trigger international accountability. If it is not, then India cannot invoke human rights arguments in its own defense internationally, because it has declared that sovereignty overrides human rights. India cannot have it both ways.

CHAPTER TEN: INDIA-US RELATIONS UNDER TRUMP: HUMAN RIGHTS IN THE BILATERAL CALCULUS

10.1 The Trump Administration and India: Strategic Recalibration

The return of Donald Trump to the White House in January 2025 and the subsequent sharp deterioration in India-US relations represents one of the most significant developments in India's strategic environment and one with direct implications for human rights accountability. The Trump administration imposed fifty percent tariffs on India, citing India's purchase of Russian crude oil and its failure to secure a trade deal by agreed deadlines. The US also increased outreach to Pakistan, reversing the trend of the first Trump term in which India had been treated as an unambiguous strategic partner.

This deterioration in the India-US relationship has paradoxical human rights implications. The United States, despite its own profound human rights failures, has been one of the few states with sufficient strategic weight to raise India's human rights record in bilateral discussions. The US Congress has been more willing to raise India's human rights situation than the executive branch: the Congressional Research Service regularly reports on India's human rights challenges, and the

Tom Lantos Human Rights Commission has held hearings on India's treatment of minorities and dissidents. The State Department's annual human rights report consistently documents India's violations in considerable detail.

But the Trump administration's foreign policy deprioritizes human rights in a manner even more extreme than previous US administrations. The HRW 2026 World Report noted that the US "did not call on the Modi administration to stem its deteriorating human rights record," and that the Trump administration's engagement with India was focused exclusively on trade, defense, and strategic positioning against China. The consequence is that what limited leverage the US relationship provided for human rights accountability has been further diminished.

The broader theoretical observation here draws on the political science literature on the "democratic recession" and its international causes. Larry Diamond, whose work on democratic recession has been foundational, argued in "Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition, and American Complacency" published in 2019 that the United States' own democratic decline and its reduced credibility as a democracy promoter was directly undermining democracy and human rights protection globally. The Trump administration's second term, which has involved attacks on the independence of the federal judiciary, attempted deportations without due process, attacks on press freedom, and the erosion of civil service independence, has further reduced US credibility as a human rights advocate. This creates what Diamond calls a "contagion of democratic regression": as the world's most powerful democracy regresses, it becomes harder for international human rights advocates to mobilize US power for accountability in other countries.

10.2 The Indictments, Diplomatic Immunity, and the US Response

The US Department of Justice indictments against Indian government agents in the Nijjar-related plots represent the most direct bilateral confrontation between India and the United States on a human rights-related issue in decades. The indictments were issued by a non-partisan prosecutorial institution (the DOJ) against the clear desire of the Indian government, and they documented credible evidence of Indian state involvement in plots to assassinate US citizens on US soil.

The political response to the indictments in the US has been constrained by the strategic relationship. Both the Biden administration (during whose tenure the initial indictments were issued) and the Trump administration balanced the prosecutorial documentation of Indian government misconduct against the strategic imperatives of the India-US relationship, particularly in the context of China. The result has been a situation in which credible, legally documented evidence of Indian state-sponsored violence against Sikh Americans has not produced the diplomatic consequences that equivalent evidence against a less strategically important state would certainly have produced.

The theoretical framework of structural realism in international relations provides the most parsimonious explanation: the United States and India are both responding to the structural pressures created by China's rise, and those pressures create strong incentives for both states to

maintain the strategic partnership even in the face of bilateral friction. The human rights dimension is a "low politics" issue that yields to the "high politics" of security in this framework.

The normative response to this realist explanation draws on the constructivist literature, which insists that the international system's structures are not given but are created and maintained through state practice and the normative frameworks in which that practice is embedded. If the United States and other democratic states consistently treat strategic partnership as trumping accountability for extraterritorial assassination by allied states, they are constituting an international norm that state-sponsored killing abroad is acceptable when the perpetrating state is a strategic ally. This norm, if consistently practiced, will be available to every state that can claim strategic importance as a justification for impunity, which is a profoundly destabilizing development for the international human rights system.

CHAPTER ELEVEN: THE THEORETICAL SYNTHESIS: FOREIGN POLICY, DEMOCRATIC DECAY, AND THE LIMITS OF INTERNATIONAL ACCOUNTABILITY

11.1 Connecting Domestic Violations and Foreign Policy Behavior

The analysis in Part Four has traced the connections between India's domestic human rights violations and its foreign policy behavior across multiple dimensions: the doctrinal framework of strategic autonomy that privileges strategic interests over human rights principles; the operational expression of this doctrine in India's positions at multilateral institutions; the transnational extension of domestic repression through extraterritorial killing and surveillance of diaspora communities; the strategic calculations that shape India's approach to Russia, China, Israel, and other states with poor human rights records; and the structural barriers to international accountability that India's strategic positioning creates.

The central theoretical insight that emerges from this analysis is that domestic democratic decay and foreign policy conduct are not separate phenomena but are systematically interconnected. A government that suppresses civil society at home has weakened the domestic watchdogs that might criticize its foreign policy behavior. A government that uses law as a tool of political control domestically has developed the institutional habits and the administrative culture that produce transnational repression. A government that cultivates impunity for security forces domestically has created the institutional framework that enables those forces to operate without accountability in extraterritorial contexts.

Steven Levitsky and Daniel Ziblatt's account of "competitive authoritarianism" in "How Democracies Die" published in 2018 identifies the gradual erosion of constitutional norms, independent institutions, and minority rights as the characteristic mechanism of democratic decline in contemporary states. Applied to India, this framework illuminates how the specific violations documented in Parts One through Four are aspects of a single process: the progressive subordination of India's constitutional order to the political interests of the ruling party and its associated social movement, the Sangh Parivar.

The foreign policy expression of this domestic process is what the South Asia Times described in December 2025 as India's shift from "earlier soft-power orientation" to "overt coercion and interference." This shift is not merely a change in diplomatic style. It reflects a deeper change in the political culture of the Indian state: the same intolerance of dissent, the same willingness to use state power to silence critics, the same elevation of the perceived interests of the dominant group over the rights of minorities that characterizes Indian domestic governance is now being expressed in India's relationships with its neighbors and its diaspora.

11.2 The International Law of State Responsibility: A Comprehensive Assessment

Drawing together the multiple dimensions of India's external conduct analyzed in Part Four, a comprehensive assessment of India's compliance with and violations of its international legal obligations is now possible.

India violates its obligations under the UN Charter through: its effective suspension of the Indus Waters Treaty in a manner that threatens civilian welfare in Pakistan, potentially in violation of Article 2(4)'s prohibition of the threat of force in international relations; its extraterritorial assassination of individuals on the territory of allied states without those states' consent, violating the principle of sovereign equality under Article 2(1); and its systematic use of diplomatic premises and personnel for operations that violate the laws of the host states, violating Article 2(2)'s obligation to fulfill Charter obligations in good faith.

India violates its obligations under the ICCPR through: the failure to ensure effective remedies for violations of rights guaranteed by the Covenant, required by Article 2(3); the systematic use of detention laws, including the UAPA, that violate the rights to liberty and fair trial guaranteed by Articles 9 and 14; the suppression of freedom of expression, association, and assembly through FCRA and anti-terrorism laws, violating Articles 19, 21, and 22; the discrimination against religious minorities through the CAA and related policies, violating Articles 2(1), 18, and 27; and the failure to protect Kashmiris' rights to life, liberty, and security, violating Articles 6, 7, and 9.

India violates its obligations under the ICESCR through: the inadequate implementation of the right to food, resulting in child malnutrition rates that constitute an emergency; the failure to protect the labor rights of the unorganized sector workforce; the denial of land and livelihood rights to forest-dwelling communities; and the inadequate provision of education, healthcare, and social security to the most marginalized populations.

India violates customary international law through: the practice of enforced disappearances in Kashmir, which is prohibited under customary law regardless of treaty non-accession; the practice of systematic torture in police and military custody, which is prohibited as a jus cogens norm; the use of collective punishment, including internet shutdowns and property demolitions targeting communities, which is prohibited under international humanitarian law and human rights law; and the extraterritorial assassination of individuals on allied states' territory, which violates the prohibition on the use of force against territorial integrity.

India is in arrears in its engagement with the UN human rights accountability system through: nineteen pending special procedure visit requests, including a twenty-five-year-old request from the Special Rapporteur on torture; the non-ratification of the Convention Against Torture and its Optional Protocol; the non-accession to the Convention on Enforced Disappearances; the non-accession to the Optional Protocol to the ICCPR; and the non-implementation of treaty body recommendations across multiple treaty bodies.

11.3 Why the International System Fails: A Political Economy of Non-Accountability

The preceding analysis raises the central question that the international human rights system must ultimately answer: why, given the extensive and well-documented character of India's violations, is there no meaningful international accountability? The theoretical literature reviewed throughout this textbook provides multiple partial answers, but a complete explanation requires integrating structural, political, and institutional dimensions.

At the structural level, India's position as a major emerging power with strategic importance in a context of great power competition between the US and China gives it effective immunity from the kinds of pressure that have produced accountability in smaller, more economically and strategically vulnerable states. The power asymmetry between India and the international human rights mechanisms that exist to hold it accountable is so extreme that the mechanisms cannot function effectively without backing from powerful states, and the powerful states that could provide that backing have concluded that strategic interests override accountability.

At the political level, the democratic recession that has affected many of India's natural allies, including the United States, the United Kingdom, and various European states, has reduced the domestic political constituency for principled human rights engagement with India. The rise of populist nationalism in Western democracies has created governments that are themselves less committed to human rights universalism and that find it politically difficult to criticize India's majoritarian nationalism without attracting hypocritical comparisons with their own treatment of minorities.

At the institutional level, the UN human rights system lacks the enforcement capacity to translate documentation into accountability without the political will of powerful member states. The treaty bodies produce excellent documentation but have no enforcement mechanism. The Special Procedures are blocked by India's refusal of access. The Human Rights Council is manipulated by the same political dynamics that give India immunity in other forums. The ICC has no jurisdiction over India. The ICJ's jurisdiction requires India's consent for contentious cases, which India withholds. The structural accountability vacuum in the international system is most severe precisely in the cases where accountability is most needed: against large, powerful, strategically important states.

The theoretical response to this structural failure draws on the work of Thomas Pogge, whose "World Poverty and Human Rights" argues that affluent states are causally responsible for the continuation of global poverty through their institutional choices: not merely by failing to help but by actively participating in the design of international institutions that systematically disadvantage poor countries and poor people. Applied to human rights, Pogge's framework

suggests that the international human rights system's failure to hold India accountable is not merely a failure of political will but a choice, made by powerful states that benefit from India's strategic cooperation, to design and operate a system that provides immunity for states of India's strategic importance.

11.4 The Concept of "Managed Hypocrisy" in International Human Rights

The concept of "managed hypocrisy," introduced by John Ruggie in his foundational work on norms in international relations and developed by subsequent scholars, describes the practice by which states profess commitments to norms they do not fully practice, with the gap between profession and practice managed through rhetorical, institutional, and diplomatic mechanisms that prevent the gap from becoming destabilizing. India's engagement with the international human rights system is a paradigm case of managed hypocrisy.

India maintains the rhetoric of democratic values and the rule of law in its international positioning while suppressing civil society, imprisoning journalists, and conducting extrajudicial killings at home. It participates actively in UN human rights mechanisms while blocking the visits and resisting the recommendations that would give those mechanisms practical effect. It claims leadership of the Global South in the name of development justice while conducting policies that dispossess the poorest communities in its own population. It presents itself as a potential mediator in international conflicts while conducting operations, including extraterritorial killing and water weaponization, that violate the foundations of peaceful international relations.

The managed character of this hypocrisy consists in the institutional and rhetorical mechanisms that prevent the gap between profession and practice from provoking a credibility crisis. India maintains the formal apparatus of constitutional rights while systematically undermining their substance. It participates in treaty body reviews while implementing none of their recommendations. It hosts the G20 while suppressing the civil society that would make global governance meaningful. Each of these mechanisms produces a surface appearance of compliance while leaving the underlying violation intact.

Philip Alston, the former UN Special Rapporteur on extreme poverty and human rights, has analyzed what he calls "Potemkin human rights frameworks" in which states maintain the formal architecture of rights protection as a facade behind which systematic violations continue. India's human rights framework is, in multiple dimensions, a Potemkin structure: constitutionally elaborate, institutionally impressive in its formal design, and fundamentally inadequate in its operation to provide protection to the people it is supposed to serve.

11.5 International Advocacy, Diaspora Mobilization, and the Boomerang Model Revisited

The "boomerang model" of transnational human rights advocacy, developed by Margaret Keck and Kathryn Sikkink in "Activists Beyond Borders" published in 1998, posits that domestic civil society organizations that are blocked from access to their own government can gain leverage by connecting with international civil society organizations and foreign governments, which then

apply pressure back on the domestic government. This model has been applied extensively in explaining how international human rights advocacy produces changes in state behavior.

In the Indian context, the boomerang model faces significant structural obstacles that have been analyzed throughout this textbook. The systematic suppression of domestic civil society through FCRA and UAPA has weakened the domestic end of the boomerang: fewer organizations can effectively document violations, access international partners, and participate in transnational advocacy networks. The international end of the boomerang has also been weakened by India's strategic importance, which gives governments strong incentives not to respond to civil society pressure by criticizing India.

But the boomerang model remains partially operative, and its most active node in the Indian context is the diaspora. Indian diaspora communities in the United States, Canada, the United Kingdom, and other democratic states are increasingly mobilized around human rights issues in India. Sikh diaspora organizations have been particularly active in documenting and advocating against India's transnational repression. Muslim diaspora organizations have been active in documenting communal violence and the CAA. Dalit diaspora organizations have been working to bring caste discrimination onto international agendas, including through lobbying for the inclusion of caste discrimination under racial discrimination frameworks.

The transnational repression activities directed at diaspora communities are India's response to this diaspora mobilization: by intimidating, surveilling, and in extreme cases killing diaspora activists, the Indian state seeks to disable the international end of the boomerang. The Nijjar assassination and the foiled US plots were not merely acts of revenge against specific individuals. They were attempts to intimidate the entire Sikh diaspora advocacy community by demonstrating that advocacy for Khalistan will be met with violence regardless of where the advocate lives.

The international legal response to this strategy requires both individual accountability for specific acts of transnational repression and the development of structural protections for diaspora communities. The first requires the criminal prosecution of the Indian state agents involved, cooperation between the affected states (Canada and the US), and the exercise of universal jurisdiction where possible. The second requires the development of international norms specifically protecting diaspora communities engaged in peaceful political advocacy from state violence, norms that do not currently exist in an explicit form.

CHAPTER TWELVE: THE GUJRAL DOCTRINE, NEIGHBOURHOOD FIRST, AND THE FAILURE OF GENUINE REGIONALISM

12.1 The Gujral Doctrine: A Principled Alternative

India's current neighborhood policy, discussed in Part Two, is often contrasted with the "Gujral Doctrine," named after former Prime Minister Inder Kumar Gujral who articulated a set of principles for India's relationships with its smaller neighbors while serving as Foreign Minister in

1996 and as Prime Minister in 1997-1998. The doctrine proposed five principles: first, India will not ask for reciprocity from its neighbors; second, India will not allow its territory to be used against any neighbor; third, India will not interfere in the internal affairs of any neighboring country; fourth, India will respect the territorial integrity and sovereignty of all countries; and fifth, India will try to resolve all disputes through peaceful bilateral negotiations.

The Gujral Doctrine was not implemented consistently even during Gujral's own tenure, and subsequent governments have largely abandoned it in practice while sometimes invoking it rhetorically. The Modi government's "Neighbourhood First" policy, which was articulated as a priority in 2014, has failed even more completely to translate into genuine respect for neighbors' sovereignty and interests. The Nepal blockade, the Farakka dispute, the BSF killings on the Bangladesh border, the transnational repression in Canada and the US, and the suspension of the Indus Waters Treaty are all inconsistent with the Gujral Doctrine's principles.

The contrast between the Gujral Doctrine's principled framework and India's actual behavior illustrates the tension between normative aspirations and structural realities in Indian foreign policy. The structural reality is that India is a large power with a tradition of paternalistic engagement with its smaller neighbors, that its political culture is saturated with Hindu nationalist ideas about the special character of the South Asian civilizational space as a Hindu domain, and that its strategic class has consistently treated relations with neighbors as a matter of managing dependents rather than engaging with equals. The Gujral Doctrine represented an attempt to override this structural and cultural reality through a principled commitment that acknowledged India's relative power and chose not to exercise it coercively. The failure to sustain this commitment reflects the depth of the structural and cultural forces that push against it.

12.2 South Asian Regional Integration and Human Rights

The failure of South Asian regionalism is one of the most significant missed opportunities in the human rights history of the region. A genuinely functional regional organization for South Asia, comparable to the Association of Southeast Asian Nations (ASEAN) or the African Union, could provide mechanisms for addressing transboundary human rights issues, for managing shared resources like water, for facilitating the movement of people and goods in ways that reduce the drivers of irregular migration and trafficking, and for building the mutual trust that is the precondition for peaceful resolution of territorial disputes.

The South Asian Association for Regional Cooperation (SAARC), founded in 1985, has failed comprehensively to develop into such an organization. The primary reason for this failure is the India-Pakistan bilateral dispute, which has repeatedly blocked SAARC's functioning: SAARC summits have been cancelled multiple times due to India-Pakistan tensions, and the organization has been unable to advance any significant regional integration agenda while the India-Pakistan relationship remains hostile.

But India's role in the failure of SAARC is not merely reactive. India has consistently resisted the development of SAARC into a genuine regional organization with independent institutional capacity, because it prefers to manage its relations with smaller neighbors bilaterally, where its

overwhelming power asymmetry gives it structural advantages that would be reduced in a multilateral setting. A genuine regional organization with independent dispute resolution mechanisms, freedom of movement provisions, and a human rights framework would constrain India's ability to use economic and political leverage over its neighbors in the ways documented throughout Parts Two and Four of this textbook.

The contrast with the European Union is instructive, though it must be made with care given the profound differences between the European and South Asian historical, cultural, and political contexts. The EU's success in creating a zone of peace and prosperity in what had been the most war-ravaged region of the world in the first half of the twentieth century rested on the willingness of powerful states, particularly Germany and France, to surrender a degree of sovereignty and to accept institutional constraints on their behavior that prevented the exploitation of smaller states by larger ones. India's consistent resistance to comparable institutional constraints in the South Asian context is a choice that has maintained the power asymmetry at the expense of regional integration and ultimately at the expense of the welfare of all South Asians.

The human rights dimension of South Asian regional integration is direct: a functional regional human rights mechanism would provide a forum for addressing violations that the UN system, constrained by India's diplomatic power, cannot adequately address. The SAARC framework has no human rights body, no complaints mechanism, and no accountability structure. The creation of such a body, even at a modest level, would represent a significant advance in regional human rights governance. India's resistance to such a development is a choice to maintain the human rights vacuum in which its own violations against its neighbors, including BSF killings of Bangladeshi nationals and water management that threatens downstream populations, go unaddressed.

12.3 The Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) as an Alternative

In recent years, India has invested more diplomatic energy in BIMSTEC, the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation, than in SAARC, partly as a way of pursuing regional engagement while excluding Pakistan. BIMSTEC includes India, Bangladesh, Myanmar, Sri Lanka, Thailand, Nepal, and Bhutan. Its expanded agenda includes trade facilitation, disaster management, energy cooperation, and security cooperation.

BIMSTEC's potential as an alternative regional framework is real but its human rights dimensions are minimal. The exclusion of Pakistan removes the bilateral dispute that has blocked SAARC but does not resolve the fundamental problem of India's dominant position in any South Asian grouping. The BIMSTEC framework has no human rights content: there is no charter provision for human rights protection, no complaints mechanism, and no accountability structure. The inclusion of Myanmar, whose military conducted a genocide against the Rohingya, and the absence of any mechanism for addressing Myanmar's human rights conduct within the BIMSTEC framework, illustrates the human rights deficit of regional cooperation premised on strategic interests without rights content.

The theoretical framework of "diffuse reciprocity" developed by Robert Keohane in "After Hegemony" published in 1984, which examines how international cooperation can be sustained through the expectation of long-term mutual benefit rather than immediate exchange, suggests that genuine regional cooperation in South Asia requires a commitment to rules and institutions that constrain the behavior of all parties, including the most powerful. India's preference for bilateral relationships, where its power asymmetry is maximized, over multilateral institutions, where it would be constrained by rules, reflects a choice of immediate power maximization over the long-term mutual benefits of genuine regional integration. This choice imposes costs on all South Asians, including Indians, but those costs are most heavily borne by the most vulnerable populations in the region.

CHAPTER THIRTEEN: THE PHILOSOPHICAL FOUNDATIONS OF INDIA'S RESISTANCE TO ACCOUNTABILITY: A CRITIQUE

13.1 The Civilizational Argument and Its Misuses

The Modi government and the RSS-affiliated intellectual tradition have developed a sophisticated civilizational argument for India's distinctiveness that serves, among other purposes, to justify resistance to international human rights standards as inappropriate impositions of "Western" values. This argument holds that India is not merely a nation-state but the contemporary expression of a civilizational tradition, the Sanatan Dharma (the eternal order), that predates the Western international order by millennia and that contains its own rich traditions of ethics, governance, and human dignity that are at least as valid as the Western liberal tradition that underpins contemporary international human rights law.

This argument has genuine intellectual predecessors in the work of serious scholars. Rajeev Bhargava's account of "civilizational statehood" in the Indian context, Sunil Khilnani's analysis of the "idea of India" in his book of that name published in 1997, and the comparative political thought tradition associated with scholars like Romila Thapar and Amartya Sen, all explore the distinctive character of the Indian constitutional and political tradition and the ways in which it both draws on and departs from the Western liberal tradition. These explorations are genuinely productive and intellectually serious.

But the civilizational argument as deployed by Hindutva ideologues and in BJP foreign policy rhetoric performs a very different function. It selectively invokes the genuine richness of India's philosophical heritage to delegitimize international scrutiny of specific contemporary violations, while simultaneously drawing on the Western international order when it serves India's interests, including claiming rights under the WTO, asserting sovereignty under the UN Charter, and participating in alliances with Western democracies. The selective invocation of civilizational distinctiveness when it shields violations and of universal standards when they serve strategic interests is not a coherent philosophical position. It is a rhetorical strategy for avoiding accountability.

The postcolonial philosopher Gayatri Chakravorty Spivak, in her foundational essay "Can the Subaltern Speak?" published in 1988, identified a different problem with civilizational arguments about non-Western societies: they consistently fail to represent the perspectives of the most marginalized within those societies. The Brahmanical Hindu tradition that Hindutva ideologues invoke as the repository of India's civilizational values is itself a tradition that has oppressed Dalits, women, and non-Hindu minorities for millennia. When upper-caste Hindu nationalist politicians invoke "Indian civilization" against international human rights standards, they are not giving voice to a genuinely inclusive Indian tradition. They are using the authority of civilization rhetoric to shield their own dominance from the accountability that both India's Constitution and international human rights law would impose.

13.2 Postcolonial Theory and the Politics of Resistance to Accountability

The postcolonial theoretical tradition, which has been a persistent reference point throughout this textbook, is both a resource for critique and a potential shield for violations. This dual character requires careful navigation.

As a resource for critique, postcolonial theory illuminates the ways in which the international human rights system has been constructed by Western powers in ways that reflect their particular historical experiences, cultural assumptions, and strategic interests. Makau Mutua's "savages, victims, saviors" analysis, Antony Anghie's account of the colonial origins of international law in "Imperialism, Sovereignty and the Making of International Law" published in 2005, and B.S. Chimni's work on Third World approaches to international law (TWAIL) all provide tools for identifying and criticizing the specific ways in which international law has served colonial and neo-colonial purposes.

As a potential shield for violations, postcolonial rhetoric can be deployed by non-Western governments to resist any international accountability for domestic violations by characterizing all external scrutiny as a form of cultural imperialism. This deployment is particularly cynical when, as in India's case, the government invoking postcolonial resistance rhetoric is itself the successor to and inheritor of colonial practices of oppression, directed now at subaltern populations within India rather than at India from without. The Indian state's use of colonial laws like AFSPA, colonial administrative practices like preventive detention, and colonial institutional cultures like the police culture documented throughout this textbook, while simultaneously invoking anti-colonial rhetoric to resist international accountability, is a form of ideological appropriation that serves only to entrench the power of those who benefit from the current system.

B.S. Chimni's account of TWAIL in its third phase, which he calls "TWAIL III," acknowledges this problem and argues that a genuinely Third World approach to international law must be committed to the rights of the world's poorest and most marginalized people, not merely to the sovereignty of Third World states. A TWAIL analysis of India's foreign policy and international human rights conduct would be scathing precisely because India's conduct at the international level serves the interests of its dominant political-economic class at the expense of the people, domestic and foreign, whose rights are most severely violated by India's behavior.

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13.3 The Capability Approach and India's International Obligations

Martha Nussbaum's capability approach, which she developed in "Women and Human Development" published in 2000 and "Creating Capabilities" published in 2011, building on Amartya Sen's foundational work on capabilities and development, provides a framework for evaluating international obligations that is both philosophically sophisticated and empirically tractable. Nussbaum argues that a life worthy of human dignity requires a set of "central capabilities" including bodily health, bodily integrity, the ability to use the senses and imagination, emotional development, practical reason, affiliation, relationships with other species, play, and control over one's political and material environment. States are obligated to support citizens in achieving these capabilities to a threshold level.

Applied to India's international obligations, the capability approach suggests several specific responsibilities. As a regional hegemon, India has obligations to avoid actions that destroy the capabilities of people in neighboring states: the suspension of the Indus Waters Treaty threatens the capabilities of millions of Pakistanis in relation to food, water, and economic security. The BSF killings on the Bangladesh border destroy the most fundamental capability, the capability for life itself, of the Bangladeshi nationals killed. India's suppression of the Rohingya's ability to seek protection from genocide destroys their capability for bodily integrity and life. These are not merely strategic miscalculations. They are capability failures for which India bears moral and legal responsibility.

Nussbaum's account is particularly powerful in its emphasis on the threshold nature of capability obligations: the obligations are not to maximize capabilities but to ensure that every person reaches a threshold of each central capability below which a truly human life is not available. The millions of people whose capabilities are damaged by India's domestic policies and its regional conduct are, in Nussbaum's framework, people who have been denied the threshold below which human life cannot be lived with dignity. The Indian state's responsibility for these failures cannot be discharged through the invocation of sovereignty or the rhetoric of development.

CHAPTER FOURTEEN: PROSPECTS FOR ACCOUNTABILITY: WHAT THE INTERNATIONAL SYSTEM COULD DO

14.1 Treaty Reform and Enhanced Monitoring

The deficiencies in the international treaty monitoring system as it applies to India have been analyzed throughout this textbook, and some potential reforms have been suggested. A more systematic analysis of treaty reform options is provided here.

The first priority is to strengthen the mechanisms for enforcing treaty body recommendations. The current system, in which treaty bodies issue recommendations and states parties are free to ignore them without consequence, provides no effective accountability. Several reform options have been proposed in the academic and policy literature. The creation of a graduated response

mechanism, in which persistent non-implementation of treaty body recommendations triggers escalating responses including diplomatic pressure, referral to the General Assembly, and ultimately economic or other consequences, would provide the accountability leverage that the current system lacks. This reform is possible without amendment to existing treaties because it operates at the institutional level of the UN human rights system rather than through the treaty texts themselves.

The second priority is to strengthen the Special Procedures system's access to states. The current situation, in which India can maintain nineteen pending visit requests for years without consequence, demonstrates the system's weakness. A reform requiring states to respond to visit requests within a defined time frame, with failure to do so triggering automatic referral to the Human Rights Council and subsequent diplomatic escalation, would provide meaningful incentives for engagement. This reform would require revision of the Special Procedures' terms of reference but not amendment of existing treaties.

The third priority is the development of a mandatory state reporting process for extraterritorial human rights impacts, including the effects of states' transboundary environmental actions, water management decisions, arms exports, and economic policies on the human rights of people in other states. India's suspension of the Indus Waters Treaty, its BSF killings on the Bangladesh border, its transnational repression activities, and its arms exports all have extraterritorial human rights impacts that are currently outside the scope of any systematic international monitoring. The ICESCR Committee's work on extraterritorial obligations, developed through General Comments and its Maastricht Principles on Extraterritorial Obligations, provides a doctrinal foundation for such a monitoring mechanism.

14.2 The Role of Regional Powers, the EU, and Democratic Allies

The European Union, despite its own human rights failures and its strategic interests in the India relationship, remains the international actor with the most consistent and credible human rights advocacy framework. The EU-India relationship, which includes a free trade agreement under negotiation and a strategic partnership, provides leverage points for human rights engagement that Western states have consistently been unwilling to use.

The EU's human rights conditionality framework, which attaches human rights conditions to trade agreements and development assistance, has been applied to other states with far less strategic importance than India. The application of genuine conditionality to the EU-India trade negotiations, requiring demonstrable progress on specific human rights benchmarks including freedom of civil society, protection of minorities, and compliance with treaty body recommendations, would represent a significant step toward meaningful accountability. The political barriers to this approach are substantial, as EU member states with significant trade and investment interests in India would resist any conditionality that might jeopardize those interests. But the legal and institutional framework for conditionality exists, and its consistent application would be transformative.

The democratic alliances in which India participates, including the Quad, the G20, and various bilateral partnerships, provide additional leverage points. The Quad's stated commitment to a

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"rules-based international order" creates a rhetorical framework within which India's violation of international rules, including the extraterritorial killing documented in Canada and the US, can be raised. The G20, in which India has been an active participant and recent host, includes mechanisms for engagement with governance and rule of law issues. None of these leverage points is currently being used effectively, but their existence represents a potential resource for advocacy.

14.3 Civil Society, Journalism, and the Documentation Function

Despite the systematic suppression of domestic civil society documented throughout this textbook, India's civil society has not been fully silenced. Independent journalism, underground networks, diaspora organizations, and committed individual advocates continue to document violations and make the documentation available to international audiences. The role of documentation in creating accountability, even in the absence of immediate legal consequences, is significant: it creates a historical record, provides the basis for future accountability processes, and sustains the political and moral pressure that is the foundation of all accountability mechanisms.

The work of organizations like Amnesty International India (forced to suspend operations in India but continuing to document from abroad), Human Rights Watch's India team, the People's Union for Civil Liberties, the Citizens for Justice and Peace, and dozens of smaller organizations working on specific issues from Dalit rights to Kashmir to Adivasi land rights, represents the continuation of a vital accountability function under conditions of severe repression. The international community's obligation to support this work, through funding, diplomatic protection, and the creation of spaces in international forums for their documentation, is a concrete and achievable responsibility.

The journalist community, which has been systematically targeted as documented in Part Three, continues to produce investigative work of extraordinary quality and courage. The Wire, Scroll, The Caravan, Article 14, and other independent media organizations, despite the legal and financial pressures they face, continue to publish investigations of the kind that are essential for any meaningful accountability process. Their work is the foundation on which international civil society, UN mechanisms, and eventually legal accountability processes must build.

CONCLUDING ANALYSIS OF PART FOUR: THE STAKES OF ACCOUNTABILITY AND THE COSTS OF SILENCE

The analysis in Part Four has traced India's foreign policy conduct and its international human rights record across twelve interconnected themes: the doctrinal framework of strategic autonomy and its human rights implications; India's conduct at multilateral institutions; transnational repression and the assassination of diaspora activists; India's relationship with Russia and Ukraine; India's positions on Gaza and its selective human rights engagement; the border situation with China and India's silence on Xinjiang; India's climate policy as a human rights issue; India's emerging role as arms exporter; India as a claimed voice of the Global South;

the doctrine of responsibility to protect and its applications; India-US relations under Trump and the bilateral calculus; and the theoretical synthesis that connects India's domestic violations and its foreign policy conduct.

The central finding of Part Four is that India's international conduct exhibits the same systematic features as its domestic conduct: the prioritization of the perceived interests of the dominant political-cultural-economic formation over the rights of those who are marginalized, excluded, or threatened by that formation. Domestically, this means the rights of Dalits, Muslims, Kashmiris, Adivasis, women, LGBTQ+ individuals, and political dissidents. Internationally, it means the rights of Pakistan's civilian population threatened by water coercion, Bangladesh's civilians killed at the border, Myanmar's Rohingya refused protection, Nepal's population affected by economic blockades, and Sikh and Muslim diaspora activists threatened by extraterritorial repression.

The theoretical frameworks examined in Part Four, from classical realism through constructivism through postcolonial theory through the capability approach, all converge on a fundamental insight: the current international system's failure to hold India accountable is not a structural inevitability but a contingent product of specific political and institutional choices that can, in principle, be made differently. The barrier is not the absence of legal tools, which exist in abundance, nor the absence of documentation, which is comprehensive, nor the absence of institutional mechanisms, which though imperfect are present. The barrier is political will: the will of powerful states to prioritize strategic interests over human rights accountability, and the will of India's own population, particularly those who benefit from the current system, to demand the transformation that genuine accountability requires.

The philosophical stakes of this failure are not merely legal or political. They are existential in the most direct sense. The people who bear the costs of India's human rights violations, in India and in its neighborhood, are real persons with bodies that are tortured, families that are separated, lands that are seized, voices that are silenced, and lives that are shortened by the systematic denial of the conditions under which human flourishing is possible. The philosophical traditions examined throughout this textbook, from natural law through legal positivism through critical theory through feminist jurisprudence through postcolonial philosophy, are agreed on one thing: the purpose of law and of international institutions is to serve these persons, not to provide convenient fictions behind which powerful interests can hide.

Part Five will examine the specific constitutional provisions that enable human rights violations, conducting a detailed legislative and jurisprudential investigation of the mechanisms through which India's constitutional order has been systematically subverted, and proposing a comprehensive framework for constitutional reform that could provide genuine protection to the rights whose violation has been documented across Parts One through Four.

PART FIVE: THE CONSTITUTIONAL ARCHITECTURE OF OPPRESSION - LEGISLATIVE INVESTIGATION, JURISPRUDENTIAL ANALYSIS, AND THE POLITICS OF SYSTEMIC SUBVERSION

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PREFATORY NOTE TO PART FIVE

The first four parts of this textbook established the theoretical frameworks through which human rights violations in India must be understood, documented the specific categories of violation across multiple domains of Indian life, examined India's conduct as a regional power that harms the populations of its neighbors, and analyzed India's relationship with the international human rights system and the structural reasons for the failure of international accountability. Throughout that analysis, a recurring theme has appeared with the consistency and persistence of a leitmotif: the Indian Constitution, that most ambitious of postcolonial legal documents, that monument to the vision of Ambedkar and the sacrifices of the independence generation, has not merely failed to prevent the violations documented throughout this work. It has, in specific and analyzable ways, enabled, facilitated, and in some respects actively produced those violations.

Part Five undertakes the detailed reckoning that this observation demands. It is a work of legislative investigation: a close, technically precise, philosophically grounded examination of the specific constitutional provisions, legislative instruments, judicial doctrines, and political processes through which the Indian constitutional order has been systematically subverted from within. It examines not merely what the laws say but what they do, not merely the formal structure of constitutional provisions but the actual operation of power through those structures, not merely the text of landmark judgments but the ideological frameworks that determine how those judgments are written and what they refuse to say.

This Part proceeds from a foundational jurisprudential premise: that law is not a neutral technical system operating independently of social power but is itself a terrain of power, a field in which competing social interests, political formations, and historical forces struggle to inscribe their will in durable, authoritative, and coercive form. Critical legal scholars from Roberto Unger to Duncan Kennedy to Patricia Williams to Upendra Baxi have established this premise with theoretical precision and empirical richness. Part Five applies this premise to the specific domain of Indian constitutional law, asking at every point whose interests are served by specific legal arrangements and whose interests are sacrificed.

The ambition of Part Five is not merely critical but constructive. The final chapters propose a comprehensive framework of constitutional and legislative reform that could provide genuine protection to the rights whose violation has been documented throughout this textbook. That reform framework is offered not in the spirit of naive optimism about the possibility of constitutional transformation in the current political environment, but in the spirit of intellectual honesty about what genuine protection of human rights would require if the political conditions for it were created. The gap between what exists and what would be needed is itself a political measurement, a record of how far the Indian state has traveled from the constitutional promise it made to its most vulnerable citizens.

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CHAPTER ONE: THE BASIC STRUCTURE DOCTRINE - GUARDIAN OR FACADE?

1.1 The Doctrine and Its Origins: A Jurisprudential Genealogy

The basic structure doctrine of the Indian Constitution, established in the landmark judgment of Kesavananda Bharati v. State of Kerala decided by a thirteen-judge bench of the Supreme Court of India on April 24, 1973, is routinely described as the most significant contribution of the Indian Supreme Court to global constitutional jurisprudence. The doctrine holds, in its essential form, that Parliament possesses the power to amend any provision of the Constitution under Article 368 but cannot, through the exercise of that amending power, alter, damage, or destroy the fundamental or basic features that constitute the essential identity of the Constitution. The amending power is a power to modify, not a power to abrogate.

The historical context of the doctrine's emergence is indispensable to understanding its jurisprudential character. By 1973, the Indian Supreme Court and the Parliament had been locked in a constitutional struggle for over two decades, primarily over the question of whether Parliament's power to amend the Constitution extended to the fundamental rights guaranteed in Part III. The Supreme Court in Golak Nath v. State of Punjab in 1967 had held, by a majority of six to five, that Parliament could not amend fundamental rights at all, a position so expansive that it threatened the entire program of social legislation that the Congress government claimed as its mandate. Parliament responded with the Twenty-Fourth Amendment, which asserted Parliament's absolute power to amend any provision of the Constitution including Part III, and the Twenty-Fifth Amendment, which further curtailed the scope of judicial review.

Kesavananda Bharati was the Supreme Court's response to Parliament's response, and the thirteen judges of the bench reached what can charitably be described as a compromise: Parliament could amend fundamental rights, but the exercise of the amending power was subject to the constraint that the basic structure of the Constitution must be preserved. Exactly which features constitute the basic structure has been progressively defined in subsequent decisions, with the Court identifying democracy, the rule of law, judicial review, the independence of the judiciary, separation of powers, federalism, secularism, the sovereignty and integrity of India, and the fundamental rights themselves as among the basic features that Parliament cannot destroy.

The theoretical foundations of the basic structure doctrine have been extensively analyzed in the jurisprudential literature, and the analysis reveals important tensions that are directly relevant to the contemporary human rights situation. The doctrine's intellectual source in the German concept of the unamendable constitutional core, reflected in Article 79(3) of the German Basic Law, which prohibits amendments affecting the human dignity guarantee of Article 1 and the democratic federal state organization of Article 20, gives it a respectable intellectual genealogy in comparative constitutional theory. But the Indian version differs from the German in a critical respect: while the German unamendable core is explicitly textual, specified in the constitutional text itself, the Indian basic structure is an extra-textual judicial construction, a set of features inferred from the constitutional text but not reducible to any specific provision.

This extra-textual character is simultaneously the doctrine's greatest strength and its most significant vulnerability. Its strength lies in its flexibility: the Court can, in principle, identify new features as part of the basic structure when their violation becomes apparent, adapting the doctrine to new forms of constitutional subversion. Its vulnerability lies in the same flexibility: a Court that is unwilling, for political or ideological reasons, to apply the doctrine to specific violations can always find reasons not to treat a challenged feature as part of the basic structure, or to find that a specific amendment, however extreme, does not destroy the basic structure even when it clearly damages it.

1.2 The Basic Structure Doctrine in Practice: The Modi Era Tests

The basic structure doctrine has been subjected to unprecedented stress under the Modi government, and the Supreme Court's responses to those stresses reveal both the doctrine's continuing importance and its practical limitations as a constraint on executive overreach.

The abrogation of Article 370 in August 2019, accomplished through Presidential Orders issued under Article 370(1) itself, was challenged before the Supreme Court on the ground that the procedure followed was constitutionally fraudulent. The specific challenge went to the fundamental legal point that Article 370 required consultation with the Constituent Assembly of Jammu and Kashmir for any modification, and since that Assembly had ceased to exist, Article 370 had become unamendable except through its own internal logic. The government's counter was to argue that the President could act through the concurrence of the Governor of Jammu and Kashmir (who was simultaneously serving as the President's direct agent under President's Rule), effectively allowing the Union to obtain its own concurrence.

The Supreme Court's five-judge bench, in Dr. Shah Faesal v. Union of India decided in December 2023, unanimously upheld the abrogation. The judgment was a profound disappointment to constitutional scholars and human rights advocates, not merely in its outcome but in its reasoning. The Court accepted the government's argument that Article 370 was a transitional provision that could be progressively reduced through the mechanism of Article 370(1) itself, and that the concurrent exercise of the President's powers during President's Rule was constitutionally valid. The constitutional scholar Gautam Bhatia described the judgment as constituting a major blow to Indian federalism by endorsing a procedure that, if generalized, would allow the Union to unilaterally modify or eliminate any special constitutional arrangement with any state simply by placing that state under President's Rule and then acting through the mechanism of the provision being modified.

The basic structure implications of the Article 370 judgment are profound. If the Court had applied the basic structure doctrine consistently, it would have been required to examine whether the conversion of a state into two Union Territories by executive action (rather than by the constitutionally prescribed process involving the state legislature's consent under Article 3), combined with the indefinite extension of President's Rule beyond the constitutionally specified period, violated the federalism feature of the basic structure. The Court chose not to confront this question with the directness it required. It acknowledged the importance of federalism but declined to apply it as a binding constraint on the government's action.

The Citizenship Amendment Act provides another critical test. The petitioners challenging the CAA before the Supreme Court have argued, with considerable force, that the Act violates the basic structure because it introduces, for the first time in Indian constitutional history, a religion-based classification in the citizenship law, thereby damaging the secularism feature of the basic structure. Secularism was held by the Court in S.R. Bommai v. Union of India in 1994 to be part of the basic structure, and the specific logic of that holding, that the Indian Constitution creates a state that is equidistant from all religions, maintaining neutrality in religious matters, is directly violated by a law that uses religion as a positive criterion for conferring citizenship benefits on some and withholding them from others.

The CAA challenge has been pending before the Supreme Court since 2019, with over 200 petitions clubbed together. As of April 2026, no substantive hearing has occurred and no final judgment has been delivered. This delay, spanning more than six years from the Act's passage, is itself a human rights violation: the law continues to operate, producing its discriminatory effects, while those whose fundamental rights it violates wait indefinitely for judicial determination. The delay cannot be explained by the Court's workload alone. It reflects a judicial reluctance to confront the most politically charged constitutional challenge since the Emergency period, a reluctance that itself represents a form of institutional complicity with the violation.

1.3 The Basic Structure and the New Criminal Codes

The replacement of the Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) respectively in 2023 and 2024 represents one of the most significant legislative changes in India's criminal justice system since independence. The government presented this transformation as a decolonization of the criminal law, a replacement of colonial instruments with laws reflecting Indian values and constitutional principles.

The jurisprudential assessment of these new codes, analyzed in detail in Chapter Two of this Part, is more complex and far less favorable. For the purposes of the basic structure analysis, the critical question is whether the changes to criminal procedure and evidence law contained in the new codes are consistent with the fair trial guarantees and the right to life and personal liberty that form part of the basic structure. Several provisions raise serious concerns.

The BNSS extends the maximum period of police custody without judicial oversight from fifteen days to ninety days, with judicial authorization, in cases involving serious offenses. This provision dramatically expands the period during which individuals can be held in conditions most associated with torture and coercive interrogation, with only the requirement of periodic judicial review rather than genuine judicial oversight of conditions of detention. The basic structure argument that this violates the rule of law and the right to life features of the basic structure is well-founded: a procedure that authorizes ninety days of police custody creates precisely the structural conditions under which torture, as documented throughout this textbook, is most likely to occur and is most difficult to prevent or prosecute.

The basic structure doctrine's application to ordinary legislation, as distinct from constitutional amendments, is contested. The doctrine was specifically developed to limit Parliament's

constituent power to amend the Constitution; its application to ordinary legislation is less well-established. But the Supreme Court's jurisprudence under Article 21, which holds that any procedure that deprives a person of life or liberty must satisfy the test of reasonableness and proportionality, provides a parallel route to the same conclusion: ordinary legislation that creates unreasonably broad powers of detention violates Article 21's substantive due process requirement, which is itself a basic structure feature.

1.4 The Political Architecture of the Basic Structure: Who Benefits?

A critical reading of the basic structure doctrine's development reveals an interesting ideological pattern. The doctrine has been most vigorously applied in contexts that protect the institutional interests of the judiciary itself, particularly the independence of the judiciary and the power of judicial review. It has been applied with considerably less vigor in contexts that would protect the substantive rights of the most marginalized. The collegium system for judicial appointments, which the Court defended against legislative modification through a basic structure argument in the NJAC case in 2015, protects the institutional autonomy of the judiciary. The secularism and equality features of the basic structure, which would require the Court to strike down the CAA and potentially other discriminatory legislation, have been protected with far less institutional energy.

This pattern is not accidental. It reflects the class character of the Indian judiciary, which is overwhelmingly drawn from upper-caste, urban, English-educated professional families and which, as an institution, has more immediate stakes in preserving its own power than in using that power to transform the social and economic conditions of those at the bottom of the hierarchy. The legal sociologist Marc Galanter's seminal study of Indian courts, published in 1984 and still largely accurate in its structural analysis, documented the ways in which the formal equality of the legal system consistently produces substantively unequal outcomes in favor of those with the social capital, economic resources, and cultural literacy to navigate the legal system effectively. The basic structure doctrine, for all its jurisprudential sophistication, operates within this system and is subject to its structural biases.

The philosopher Roberto Unger's argument in "The Critical Legal Studies Movement" published in 1983 that law exhibits a form of "internal contradiction" between its formal justice commitments and its substantive justice implications is directly applicable here. The basic structure doctrine formally commits the Indian Supreme Court to the protection of democratic and rights-based features of the Constitution. But its substantive application has been systematically tilted in favor of the institutional interests that the judiciary shares with the dominant political and economic class, rather than the substantive rights of the politically disempowered. Resolving this contradiction would require not merely the application of better legal reasoning but a transformation of the social composition of the judiciary and the political culture of judicial institutions.

CHAPTER TWO: THE BHARATIYA NYAYA SANHITA AND THE NEW CRIMINAL CODES - DECOLONIZATION OR RE-ENTRENCHMENT?

2.1 The Rhetoric of Decolonization and the Reality of Continuity

The BJP government's replacement of the three colonial-era criminal codes, in force since the nineteenth century, with new Indian-named equivalents was accompanied by extensive rhetoric about decolonization, about replacing laws that had served British imperial purposes with laws that would serve the values and interests of independent India. Home Minister Amit Shah, who championed the legislative change, described the new codes as reflecting the soul of Indian culture and the spirit of the Indian Constitution.

This rhetoric must be subjected to critical examination. The term "decolonization" in the legal context has a specific and demanding meaning. As Frantz Fanon insisted and as the postcolonial legal literature has extensively elaborated, genuine decolonization of a legal system requires the transformation of the underlying logic of the law, the purposes it serves, the interests it protects, and the populations it controls. Merely changing the names of laws, translating the operative text into Hindi, and adding Sanskrit-derived titles does not accomplish decolonization in any meaningful sense if the substantive provisions of the laws remain oriented toward the same purposes of social control, state protection, and suppression of dissent that characterized their colonial predecessors.

The analysis that follows demonstrates that the new criminal codes represent not decolonization but re-entrenchment, a reinscription of colonial logic in new linguistic clothes, with significant additions that extend the reach of state power in ways that would have been recognizable to the architects of the original colonial codes.

2.2 The Bharatiya Nyaya Sanhita: Sedition Transformed

The most extensively discussed change in the BNS is the treatment of the former Section 124A of the IPC, the sedition provision. The Supreme Court's 2022 stay of Section 124A's operation, pending a review that recognized the provision's colonial origins and its extensive misuse, created pressure for the government to address the provision in the legislative overhaul. The government's solution was to omit Section 124A from the BNS while introducing Section 152, which penalizes "acts endangering sovereignty, unity and integrity of India," with imprisonment that may extend to life.

The jurisprudential analysis of this substitution reveals its fraudulent character. Section 124A, the old sedition provision, had been narrowed by the Supreme Court in Kedar Nath Singh v. State of Bihar in 1962 to apply only to speech that incites imminent violence or tends to disturb public order. Whatever its deficiencies as a rights-respecting provision, the Kedar Nath Singh limitation at least provided a doctrinal frame within which the courts could assess whether specific prosecutions were constitutionally permissible. Section 152 of the BNS, by contrast, defines its offense in terms of acts "endangering sovereignty, unity and integrity of India," a formulation of infinite elasticity. It also extends to acts "tending to support separatist activities" or acts "endangering sovereignty or unity and integrity of India," which can encompass virtually any political or journalistic activity that challenges the government's position on Kashmir, Manipur, or any number of other contested political questions.

The legislative history of this provision reveals its political purposes with unusual clarity. During the parliamentary debates on the BNS, government spokespersons explicitly stated that Section 152 would be used against those who challenged India's territorial integrity or supported separatism. These statements, made in the context of the provision's introduction, constitute contemporaneous evidence of its intended application: not to genuine threats to national security but to political dissent that the government characterizes as dangerous. The provision therefore accomplishes through new language precisely what the old sedition provision accomplished in the colonial period: the criminalization of political challenge to state authority.

The jurisprudential tradition in comparative constitutional law is clear that provisions of this character violate the requirements of legal certainty that are essential to a rights-respecting criminal law. The European Court of Human Rights has consistently held, in cases from Kokkinakis v. Greece to Pasko v. Russia, that criminal provisions must be formulated with sufficient precision that an individual can foresee, to a reasonable degree, the consequences of their actions. Section 152's broad and undefined terms cannot satisfy this requirement. The UN Human Rights Committee's General Comment 34 on freedom of expression, the most authoritative interpretation of Article 19 of the ICCPR to which India is a party, explicitly states that restrictions on freedom of expression for reasons of national security must be prescribed by law and narrowly tailored to the specific harm they seek to prevent. Section 152 satisfies neither requirement.

The scholar Tarunabh Khaitan, in his analytical work on constitutional design and executive aggrandizement published in the Cambridge Constitutional Law review in 2019 and extended in subsequent work through 2024 and 2025, identified the replacement of judicially constrained provisions with new provisions that accomplish the same substantive purpose but avoid the specific doctrinal limitations imposed by judicial review as a characteristic technique of what he calls "legislative circumvention of judicial review." The BNS Section 152 is a textbook example of this technique: by creating a new provision that does not formally incorporate the old one, the government has evaded the Supreme Court's stay of Section 124A without complying with the constitutional concerns that motivated that stay.

2.3 The BNSS: Extended Custody, Handcuffs, and the Normalization of Torture

The Bharatiya Nagarik Suraksha Sanhita, which replaced the Code of Criminal Procedure, contains several provisions that substantially expand the punitive and coercive powers of the police and prosecution in ways directly contrary to the human rights protections guaranteed by the Constitution and by international law.

The most significant is the extension of police remand, the period during which a suspect can be held in police custody rather than judicial custody. The old CrPC allowed a maximum of fifteen days of police remand, divisible across two periods of custody, with the remainder of pre-trial detention to be spent in judicial custody. The BNSS extends this to ninety days, in installments of fifteen days each, for serious offenses as defined by the Code. The specific mechanism of this extension, which allows repeated applications for fifteen-day remand over a ninety-day period, creates a structure in which a suspect can be continuously cycled back into police custody throughout the ninety-day period.

The human rights significance of this change must be understood in the context of the extensive and well-documented practice of torture in Indian police custody analyzed in Part One of this textbook. The fifteen-day limit under the old CrPC was itself regarded by human rights organizations as excessively long, given the prevalence of custodial torture. Extending it to ninety days dramatically enlarges the window of vulnerability. There is no reason to believe, and every empirical reason to doubt, that the extension will be accompanied by any improvement in the conditions of police custody or in the accountability of police officers for custodial violence.

The BNSS also permits handcuffing of arrested persons in circumstances that the old CrPC had restricted through a combination of legislative text and Supreme Court interpretation. The Supreme Court in Prem Shankar Shukla v. Delhi Administration in 1980 held that handcuffing is prima facie inhuman and therefore unreasonable and excessive under Article 21, and could be used only in circumstances where there was no other way of preventing escape or averting a specific identified risk. The BNSS's handcuffing provision, which permits handcuffing in a broader range of circumstances without requiring the judicial consideration that the Supreme Court's jurisprudence mandated, represents a legislative rollback of a human rights protection developed through decades of constitutional interpretation.

The extension of police custody powers also has an obvious functional relationship with the government's stated objective of increasing conviction rates. India's conviction rate in criminal cases is among the lowest of any major jurisdiction, reflecting not a culture of excessive leniency toward criminals but a criminal justice system in which the quality of investigation and evidence gathering is poor, confessions obtained through coercion are inadmissible in principle but are used as investigative shortcuts in practice, and the prosecution depends heavily on pre-trial pressure rather than genuine evidence building. Extending police custody does not address any of these structural problems. It simply provides more time for the exercise of the coercive practices that have characterized Indian police functioning throughout the postcolonial period.

The philosopher David Luban, in his work on the ethics of interrogation and his analysis of the "ticking bomb" argument for torture, has identified the specific ways in which institutional structures that authorize extended detention without effective oversight create what he calls "torture cultures": organizational environments in which coercive interrogation becomes normalized, expected, and institutionally supported rather than exceptional and prohibited. The BNSS's extension of police custody creates precisely the structural conditions that Luban's analysis identifies as predictive of torture normalization. This is not a contingent risk but a foreseeable consequence of the design of the provision.

2.4 The Bharatiya Sakshya Adhiniyam: Electronic Evidence and Surveillance Power

The Bharatiya Sakshya Adhiniyam, replacing the Indian Evidence Act, contains provisions governing electronic evidence that have significant implications for privacy, surveillance, and the fair trial guarantee. The law expands the admissibility of electronic evidence and modifies the conditions under which digital communications can be used in criminal proceedings.

The specific concern is the interaction between the BSA's electronic evidence provisions and India's extensive and largely unregulated surveillance apparatus. India does not have a

comprehensive data protection law that governs the conditions under which the state can intercept, collect, store, and use the electronic communications of individuals. The Personal Data Protection Bill was withdrawn in 2022, and the Digital Personal Data Protection Act of 2023, while addressing some aspects of data protection, contains extensive carve-outs for government surveillance that leave the state's ability to intercept communications essentially unconstrained by judicial oversight.

In this context, the BSA's provisions expanding the admissibility of electronic evidence function as the courtroom end of a surveillance pipeline that is unrestricted at the collection end. Evidence obtained through unlawful interception or surveillance, if it cannot be challenged as inadmissible in court, provides an incentive for continued use of unlawful surveillance methods. The principles of the exclusionary rule and the fruit of the poisonous tree doctrine, which in various forms govern the admissibility of illegally obtained evidence in most rights-respecting legal systems, are inadequately developed in Indian evidentiary law. The BSA does not address this gap and may in some respects widen it.

The Pegasus spyware controversy, in which Indian journalists, opposition politicians, and human rights activists were found to have been targeted by Israeli-developed military-grade surveillance software, illustrated the breadth of the Indian state's surveillance ambitions and the absence of any effective legal constraint on their exercise. The Supreme Court's special inquiry committee on the Pegasus matter, established in October 2021, delivered an inconclusive report in August 2022, finding that it could not definitively establish government use of Pegasus due to the government's refusal to cooperate with the inquiry. The BSA does nothing to address the underlying legal vacuum that makes this kind of surveillance possible and essentially unaccountable.

2.5 The Jurisprudential Assessment: What the New Codes Actually Accomplish

A comprehensive jurisprudential assessment of the three new codes reveals the following pattern. They retain the essential structure of the colonial criminal law, including its orientation toward state protection rather than individual rights, its heavy reliance on police discretion, and its tolerance of coercive investigation methods. They expand state power in specific areas, particularly by extending the period of police custody and broadening the definitions of crimes related to political speech and national security. They incorporate some modest improvements in certain areas, including the introduction of trial timelines and some victim protection provisions. But they fundamentally fail to address the structural drivers of human rights violations in the criminal justice system: the culture of impunity for police violence, the inadequacy of legal aid for the poor, the systemic discrimination against marginalized communities, and the use of criminal law as an instrument of political control.

The rhetorical claim of decolonization thus performs a specific political function: it allows the government to present legislative regression as progressive reform, to use the legitimate moral authority of the anti-colonial tradition to shield measures that entrench the colonial logic of criminal law rather than dismantling it. This is exactly the kind of ideological appropriation that Part Four's analysis of civilizational arguments identified: the use of genuinely valuable political traditions to legitimize actions that are incompatible with those traditions' own stated values.

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CHAPTER THREE: THE WAQF AMENDMENT ACT 2025 - DISPOSSESSION AS LEGISLATION

3.1 Waqf in Islamic Jurisprudence and Indian Law: A Historical Overview

The institution of waqf occupies a foundational place in Islamic social and legal thought. In its essence, waqf is the permanent dedication of property, movable or immovable, to a purpose recognized by Islamic law as pious, religious, or charitable. Once dedicated, the waqf property becomes, in the classical theological conception, inalienable, held in perpetuity for the divine purpose to which it has been consecrated. The income from waqf properties has historically supported mosques, schools, hospitals, traveler's shelters, and the relief of the poor across the Islamic world. The institution thus represents not merely a legal mechanism but an expression of the Islamic theological conception of trusteeship, the idea that all property ultimately belongs to God and that human beings are stewards of wealth in the service of divine and community purposes.

In the Indian legal context, waqf has been recognized and regulated by a long series of legislative instruments stretching back through the colonial period. The Mussalman Waqf Validating Act of 1913, the Mussalman Waqf Act of 1923, and ultimately the Waqf Act of 1995 (with significant amendments in 2013) established a comprehensive statutory framework for the administration of waqf properties, creating State Waqf Boards as statutory bodies to manage the properties, resolve disputes through Waqf Tribunals, and maintain registers of waqf assets.

The scale of waqf in India is substantial. According to official government data, there are over 872,000 registered waqf properties across India, spanning approximately 940,000 acres of land, with an estimated aggregate value of several billion USD. These properties include some of the most historically and culturally significant sites in Indian cities, including mosques that have stood for centuries, graveyards that represent the burial places of generations of Muslim families, dargahs (Sufi shrines) that serve as centers of religious and cultural life for millions, and educational institutions that provide schooling to Muslim and non-Muslim students alike.

The concept of "waqf by user" deserves special attention because its abolition in the 2025 Amendment is one of the most legally and practically significant changes the Act introduced. Waqf by user refers to the recognition of a property as waqf based on its continuous public use for Islamic religious or charitable purposes over an extended period, even in the absence of a formal written dedication document. This doctrine developed in the Islamic legal tradition in recognition of the historical reality that many dedications of property to religious purposes occurred informally, through oral declaration or through the practice of dedication itself, without the preparation of formal legal instruments. Properties that had functioned as mosques, graveyards, and schools for generations without formal paperwork had acquired, through their continuous use and public recognition, the legal status of waqf.

The 2025 Amendment's abolition of waqf by user, without providing any mechanism for the regularization of properties that have long been recognized as waqf under this doctrine, exposes

thousands of historically Muslim religious sites to potential deregistration, legal challenge, and ultimately dispossession. The Supreme Court in its September 2025 interim order partially addressed this concern by extending the period for waqf registration and clarifying that waqf by user properties declared by courts would be protected. But the underlying legal change remains in force, and the practical consequences for the very large number of waqf properties without formal documentation will emerge over time as the law is implemented.

3.2 The 2025 Amendment: Provisions, Purposes, and Political Context

The Waqf (Amendment) Act 2025, passed by the Lok Sabha on April 3, 2025, and the Rajya Sabha on April 4, 2025, introduced 44 amendments to the Waqf Act 1995, renaming it the "Unified Waqf Management, Empowerment, Efficiency, and Development Act." The government's stated rationale for the Amendment was to improve transparency and accountability in waqf administration, to address corruption in Waqf Boards, to streamline governance mechanisms, and to ensure that waqf properties better served the welfare of the Muslim community. These stated objectives are not without merit: corruption and mismanagement in some State Waqf Boards is a genuine problem that has been documented by audit reports and acknowledged by Muslim community organizations themselves.

But the specific provisions of the 2025 Amendment go far beyond what would be required to address the stated governance problems, and several of them have the character not of administrative reform but of targeted interference with Muslim religious and institutional autonomy. The most significant provisions are as follows.

The inclusion of non-Muslim members in the Central Waqf Council and State Waqf Boards represents an unprecedented intrusion into the administration of a specifically religious institution. Article 26(b) of the Constitution guarantees every religious denomination the right to manage its own affairs in matters of religion. The Islamic legal character of waqf, its grounding in Islamic theological concepts of dedication and pious purpose, means that the administration of waqf properties is a matter of religion in the relevant constitutional sense. Appointing non-Muslim members to governance bodies that adjudicate questions of Islamic religious law, interpret waqf deeds created under Islamic legal concepts, and make decisions about the use of properties dedicated to Islamic religious purposes, constitutes interference with a religious denomination's right to manage its own affairs.

The government's counter-argument, advanced by the Solicitor General before the Supreme Court, is that the functions of Waqf Boards are secular or regulatory rather than religious, and that therefore the inclusion of non-Muslims does not violate Article 26(b). This argument fails both analytically and in terms of its implications. Analytically, it rests on a false distinction between the management of waqf properties (characterized as secular) and their Islamic religious purpose (acknowledged but treated as irrelevant to governance). The management of waqf properties is inseparable from their religious character because the relevant management decisions, what constitutes a pious purpose, whether a specific use is consistent with the terms of the dedication, how to resolve disputes about the interpretation of a waqf deed, are questions that require engagement with Islamic religious law and Islamic theological principles. A governance

board that includes significant numbers of members who lack the relevant Islamic legal education and cultural formation cannot perform these functions adequately.

The implication dimension of the counter-argument is equally revealing. If the government's logic were applied consistently across all religious endowments, it would equally support the inclusion of non-Hindu members in Hindu religious endowment boards, non-Sikh members in Sikh gurdwara committees, and non-Christian members in church property management bodies. The government has made no proposal of this kind. The Waqf Amendment is specifically directed at Muslim religious institutions. This selective targeting is precisely the kind of discriminatory treatment that the Constitution's non-discrimination provisions prohibit.

3.3 The Collector's Power and the Separation of Powers

One of the most constitutionally troubling provisions of the 2025 Amendment was Section 3C, which gave District Collectors the power to determine whether a specific property is waqf or government property when the question was in dispute, effectively transferring adjudicatory power over property rights from the independent Waqf Tribunal (a judicial body) to an executive officer who is part of the district administration and therefore subject to political direction.

The separation of powers implications of this provision are direct. The power to determine property rights is paradigmatically a judicial function. The assignment of this function to an executive officer, in a context where the executive has a clear political interest in the outcome (since the government's overall political agenda involves the reduction of Muslim institutional landholding and the expansion of government control over Muslim assets), creates an obvious conflict of interest that is incompatible with the rule of law principle that adjudication of rights must be performed by independent and impartial tribunals.

The Supreme Court's interim order of September 2025, which stayed Section 3C specifically on the ground that it violated the separation of powers, represents a significant constitutional holding. Chief Justice Gavai's bench found that the provision was prima facie constitutionally unsustainable because it "allowed for a property not to be treated as Waqf until the officer submitted a report on their status, and which allowed for corrections in the revenue records of the state government and Waqf Boards simply based on a determination by a government officer." This is one of the clearest separations of powers rulings the Indian Supreme Court has issued in the Modi era, and its survival in the final merits judgment will be an important test of the Court's continued commitment to the basic structure features of judicial independence and the rule of law.

3.4 The Hindu Religious Endowments Comparison: Selective Reform and Constitutional Equality

Any serious constitutional analysis of the Waqf Amendment must engage with the comparison between the legal framework governing waqf and the framework governing Hindu religious endowments. Hindu temples in several southern Indian states, including Tamil Nadu, Andhra Pradesh, and Kerala, are governed under state Hindu Religious and Charitable Endowments Acts that place them under significant government control, including government appointment of

trustees and government management of temple revenues. Hindu nationalist organizations have consistently criticized this government control of Hindu temples as an infringement of religious autonomy and demanded the legislative equivalent of the Waqf system, community management free of government oversight.

The comparison reveals a profound constitutional inconsistency in the government's approach. If the control of religious endowments by their own community through self-governing religious boards is a right that Hindu organizations claim for Hindu temples, then the 2025 Amendment's expansion of government control over Muslim waqf properties and its inclusion of non-Muslim members in Waqf governance represents a discriminatory double standard: demanding the reduction of government control over Hindu temples while simultaneously increasing government control over Muslim waqf properties.

The jurisprudential foundation for this equality argument is Article 14 of the Constitution, which prohibits arbitrary discrimination, combined with Article 15, which prohibits discrimination on grounds of religion. The courts have held that Article 14 requires not just equal treatment of similarly situated persons but also that apparently neutral distinctions cannot be made on impermissible grounds. The selective expansion of government control over specifically Muslim religious institutions, while no equivalent expansion is proposed for Hindu religious institutions, is a classification based on religion that requires rigorous justification under Article 14 and that fails to provide any justification unrelated to the religious identity of the affected institution.

The theorist of comparative anti-discrimination law Tarunabh Khaitan, in his work "A Theory of Discrimination Law" published in 2015 and subsequent articles through 2024, argues that discrimination law is properly understood as prohibiting the use of protected characteristics as grounds for imposing disadvantage on members of groups that have historically been subjected to systematic disadvantage on the basis of those characteristics. India's Muslim community has been subjected to systematic disadvantage on the basis of religion throughout the Hindu nationalist project, as documented in Part One of this textbook. The 2025 Waqf Amendment, in this analytical framework, is a form of discrimination because it uses the protected characteristic of religion to impose a specific disadvantage on Muslim religious institutions, a disadvantage not imposed on Hindu religious institutions in comparable governance contexts.

3.5 The Waqf Amendment and the Threat to Muslim Cultural Heritage

Beyond the constitutional analysis, the 2025 Waqf Amendment poses a specific threat to Muslim cultural heritage in India that deserves analysis in its own right. The abolition of waqf by user, combined with the mandatory registration requirements and the Collector's power to investigate disputed properties, creates a legal mechanism through which historical Muslim religious sites can be progressively deregistered, contested, and potentially transferred out of Muslim community control.

The concern is not hypothetical. According to the Indian government, there are at least 872,351 waqf properties in India, spanning more than 940,000 acres, with an estimated value of $14.22 billion. The Soufan Center Many of these properties, particularly the oldest and most historically significant, are precisely those most likely to lack formal documentation of their waqf status.

Mosques and shrines that have stood for five or six centuries were not created through the modern legal mechanism of a registered waqf deed. Their religious character is established through centuries of use, community recognition, and in many cases judicial acknowledgment under the waqf by user doctrine. The abolition of this doctrine without a comprehensive mechanism for the regularization of historically recognized waqf properties exposes the most irreplaceable elements of Muslim cultural and religious heritage in India to legal challenge.

The Indian Islamic architecture and cultural heritage that is at risk includes monuments and sites that are globally recognized as among the most significant in the world, including mosques, dargahs, and religious schools that represent the rich synthesis of Islamic and Indic architectural traditions that developed across the subcontinent over a millennium. The progressive legal exposure of these sites to deregistration and potential transfer represents a form of cultural dispossession that, while accomplished through administrative rather than violent means, parallels the physical demolitions of the bulldozer justice phenomenon analyzed in Part One.

The international framework for the protection of cultural heritage, including the UNESCO Convention on Cultural Diversity of 2005 and the World Heritage Convention, provides some protection for heritage sites that have achieved international recognition. But the vast majority of waqf properties, however historically and culturally significant to the Muslim community, do not have international heritage status. Their protection depends entirely on the willingness of the Indian legal system to enforce their religious character against the encroachment of majoritarian state power, which is precisely the willingness that the 2025 Amendment's political context calls into question.

CHAPTER FOUR: EMERGENCY POWERS AND THE PERMANENT EXCEPTION - THE JURISPRUDENCE OF SUSPENDED RIGHTS

4.1 The Architecture of Emergency in the Indian Constitution

The Indian Constitution's emergency provisions occupy Articles 352 through 360, a cluster of provisions that gives the executive extraordinary powers to suspend normal constitutional arrangements in the face of specified threats. The three types of constitutional emergency are the national emergency under Article 352 (war, external aggression, or armed rebellion), President's Rule in states under Article 356 (when a state government cannot function in accordance with the constitutional provisions), and the financial emergency under Article 360 (a financial emergency affecting the credit of India or any part thereof).

The theoretical foundation of constitutional emergency provisions is the doctrine of necessity, the idea that in extreme circumstances the normal constraints of law must yield to the necessity of preserving the conditions under which law can function at all. This doctrine has a long intellectual history stretching from Jean Bodin through Thomas Hobbes through Carl Schmitt. Schmitt's formulation, that the sovereign is whoever decides the exception, is the most analytically powerful and most politically disturbing version of the doctrine: it exposes the way

in which emergency powers place the determination of when rights must be suspended in the hands of the very authority that is benefited by that suspension.

The Indian Constitution's emergency provisions were intended by their drafters to be narrowly scoped, genuinely exceptional, and subject to significant safeguards. The Forty-Fourth Amendment of 1978, enacted in direct response to the abuse of emergency powers during the 1975-77 Emergency, introduced several important safeguards: the requirement of a written cabinet recommendation to the President before an emergency can be declared, the requirement of parliamentary approval by a two-thirds majority, the requirement of renewed approval at six-monthly intervals, and the right of a majority of the House of the People to pass a resolution revoking the emergency. The Amendment also restored the right to move courts for enforcement of rights under Articles 20 and 21 even during emergency, reversing the Supreme Court's notorious ADM Jabalpur capitulation.

But as the analysis in Part One of this textbook demonstrated, the formal emergency provisions under Articles 352-360 are not the primary mechanism through which emergency-style powers are exercised in contemporary India. The primary mechanisms are the special-purpose laws, particularly the Armed Forces Special Powers Act, the Unlawful Activities Prevention Act, the National Security Act, the Public Safety Act in Jammu and Kashmir, and now the provisions of the BNS and BNSS, that create permanent quasi-emergency conditions for specific populations and territories without triggering the procedural safeguards of formal constitutional emergency.

4.2 The Jurisprudence of Derogation: International Standards and Indian Practice

The international human rights law framework for emergency situations is primarily contained in Article 4 of the ICCPR, which allows states to derogate from (temporarily suspend) most Covenant rights in times of public emergency that threaten the life of the nation, subject to several conditions: the measures must be strictly required by the exigencies of the situation, they must not be inconsistent with the state's other obligations under international law, and they must not be discriminatory solely on the ground of race, colour, sex, language, religion, or social origin. Certain rights are designated as non-derogable even in states of emergency: the right to life, the prohibition of torture, the prohibition of slavery, the right not to be imprisoned for failure to fulfill a contractual obligation, the prohibition of retroactive criminal laws, the right to recognition as a person before the law, and freedom of thought, conscience, and religion.

The jurisprudence of derogation developed by the UN Human Rights Committee in General Comment 29, published in 2001 and still the authoritative interpretation of Article 4, establishes a demanding standard for the legitimate invocation of derogation powers. The emergency must be actual or imminent, not merely possible. It must threaten the life of the nation, affecting the entire population. The government must have officially proclaimed a state of emergency and notified the Secretary-General of the United Nations. The measures taken must be strictly necessary and proportionate. The state must comply with other procedural requirements. And the measures may not discriminate on prohibited grounds.

India has never formally notified the UN Secretary-General of a derogation from the ICCPR, even during periods when emergency-style measures have been extensively applied. This means

that India's emergency powers legislation must be assessed against the full ICCPR standard, without the qualified protection that a lawfully proclaimed and notified derogation would provide. The consequence is that virtually all of India's emergency powers legislation, including AFSPA, UAPA, the NSA, and the PSA, is incompatible with India's ICCPR obligations as measured against the full Covenant standard.

The European Court of Human Rights' jurisprudence on emergency derogation, while formally applicable only to European Convention states, provides the most developed body of case law on the international legal standard and is regularly referenced by the Human Rights Committee. The ECtHR in Brannigan and McBride v. United Kingdom in 1993 upheld the UK's derogation from the Convention in the context of Northern Ireland, but subject to significant conditions: the derogation was formally proclaimed, notified, and time-limited; judicial oversight remained available; and the measures were not applied discriminatorily. None of these conditions are satisfied by India's special powers legislation, which is non-derogating, permanent (in practice if not in formal law), and applied overwhelmingly to specific ethnic, religious, and political communities.

4.3 UAPA 2024-2026: The Continuing Expansion of Counterterrorism Law

The Unlawful Activities Prevention Act, analyzed in its structural dimensions in Part One, has continued to generate controversy and to be applied in contexts that confirm the analysis of its misuse. The National Human Rights Commission registered 121 deaths in police custody, 1,558 deaths in judicial custody, and 93 alleged extrajudicial killings in the first nine months in 2024. Human Rights Watch While not all of these deaths can be attributed to UAPA detentions specifically, the overall pattern of custodial mortality provides the context within which the extension of detention powers must be assessed.

The designation of individuals as terrorists under the 2019 UAPA amendments has continued to be used against political dissidents and human rights defenders. The continued imprisonment, without trial, of multiple individuals charged in the Bhima Koregaon case, despite the digital forensic evidence of planted evidence documented in Part One, represents the most concentrated and well-documented instance of UAPA's use as a political silencing mechanism. As of April 2026, some of the accused in that case have been in pre-trial custody for six or more years. The international standard under Article 14(3)(c) of the ICCPR, which guarantees the right to be tried without undue delay, is comprehensively violated by detentions of this duration.

The Maharashtra Special Public Security Bill, described by human rights organizations as a "son of UAPA," proposed in 2024 and continued to be debated in 2025, would create a state-level equivalent of the UAPA's broad designation powers, allowing state governments to declare organizations "unlawful" and to prosecute their members under counterterrorism provisions. At year's end, Amnesty International sent an open letter to the Governor of Maharashtra to withhold assent to the Maharashtra special public security bill. Amnesty International The proposal represents the diffusion of the UAPA's repressive logic from the central to state level, creating a patchwork of emergency-style legislation across BJP-governed states that would allow each state government to independently criminalize political dissent within its territory.

The theoretical critique of emergency powers developed by Giorgio Agamben in "State of Exception," published in Italian in 2003 and in English translation in 2005, is directly applicable to this legislative trajectory. Agamben argues, drawing on Walter Benjamin and Carl Schmitt, that the twentieth century has seen the normalization of the state of exception: the emergency powers that were originally conceived as temporary derogations from the normal order have become permanent features of the order itself, creating what he calls a "permanent state of emergency" in which the normal law is perpetually suspended for certain populations. India's trajectory of emergency legislation precisely illustrates Agamben's analysis: AFSPA has been in continuous operation in some regions for more than sixty years, the UAPA has been continuously in force and progressively expanded since 1967, and the new criminal codes have institutionalized extended police custody across the entire criminal justice system. The exception has become the rule.

4.4 Internet Shutdowns as Administrative Emergency: The Legal Void

Indian authorities continued to impose the largest number of internet shutdowns globally, violating Indian law and international human rights standards. Human Rights Watch The legal framework for internet shutdowns in India illustrates the broader problem of administrative emergency powers that operate in a space of inadequate legal regulation.

Internet shutdowns in India are primarily imposed under Section 144 of the CrPC (now its equivalent in the BNSS), which allows Magistrates to issue orders prohibiting any act likely to cause danger or obstruction to public order or tranquility, and under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules of 2017. The 2017 Rules, issued as subordinate legislation under the Indian Telegraph Act of 1885, require shutdowns to be authorized by the Home Secretary at the state level or the Secretary of the Ministry of Home Affairs at the central level, to be proportionate to the situation, and to be subject to review by a committee within five working days.

The Supreme Court's Anuradha Bhasin judgment of January 2020 established that freedom of speech on the internet is a fundamental right under Article 19(1)(a) and that internet shutdowns must comply with the requirements of proportionality, least restrictive means, and judicial review. But the implementation of this judgment has been patchy. Shutdowns have continued in large numbers, many of them manifestly disproportionate, and the review mechanism under the 2017 Rules has been shown to be largely ineffective.

The specific human rights harm of internet shutdowns is not merely the denial of access to online communication, significant as that is. The shutdowns disproportionately hurt socially and economically marginalized communities by denying them access to free or subsidized food rations and livelihoods. Human Rights Watch As India's welfare delivery systems have been progressively digitized, internet access has become essential for accessing government services, including the biometric authentication required for the public distribution system that provides subsidized food to hundreds of millions of the poorest households. An internet shutdown in a poor rural district does not merely inconvenience those who use social media; it may interrupt the food supply of families who depend on digital systems for welfare entitlements.

This digital welfare access dimension makes internet shutdowns a violation not merely of civil and political rights but of the economic and social rights guaranteed by the ICESCR: specifically the right to food under Article 11. The UN Committee on Economic, Social and Cultural Rights has not yet issued a General Comment specifically addressing internet access as an economic and social rights issue, but the Human Rights Committee's recognition of internet freedom as a civil and political right, combined with the empirical evidence of the economic and social consequences of shutdowns, provides a strong basis for an integrated rights analysis.

CHAPTER FIVE: THE JUDICIARY - INDEPENDENCE, DEFERENCE, AND STRUCTURAL COMPLICITY

5.1 The Collegium System and Its Discontents

The independence of the judiciary is among the most fundamental features of a constitutional democracy and has been specifically recognized as part of the basic structure of the Indian Constitution. But the formal guarantee of judicial independence does not exhaust the analysis of whether the Indian judiciary is genuinely independent. Independence from executive control in formal appointment processes does not guarantee independence in the substance of judicial decisions, particularly in politically sensitive cases involving challenges to government power.

The collegium system of judicial appointments, in which the Chief Justice of India and the two (for High Court appointments) or four (for Supreme Court appointments) most senior judges of the Supreme Court recommend appointments and transfers, was established through judicial interpretation in the Second and Third Judges cases decided in 1993 and 1998. The system was controversial from its inception: it replaced executive-dominated appointment with collegium-dominated appointment, but the collegium operates without legislative oversight, without published criteria, and with minimal transparency about the factors that determine who is appointed and who is not.

The National Judicial Appointments Commission Act of 2014, which the government introduced to replace the collegium with a commission that included executive and eminent person representation, was struck down by the Supreme Court in the NJAC case in October 2015 on the ground that it violated the independence of the judiciary as a basic structure feature. The five-judge bench's reasoning was that giving the executive effective veto power over judicial appointments would compromise the independence of the judiciary. This reasoning is defensible in principle, but the alternative of the collegium is itself not a satisfactory solution: a system in which judges select their own successors through opaque processes is not independence in the sense required by international judicial independence standards.

The UN Basic Principles on the Independence of the Judiciary, adopted in 1985, provide that judicial appointments shall be made by an independent body and that the process shall be transparent and based on objective criteria. The Indian collegium system satisfies neither requirement: it is not independent of the judiciary itself (making it not truly independent of one branch of government), it is not transparent, and it lacks published objective criteria. The

government's repeated criticism of the collegium as nepotistic and unaccountable is not without foundation, even if its proposed NJAC solution was constitutionally inadequate.

The practical consequence of the collegium system for human rights is that the ideology and values of appointing judges significantly shape the constitutional jurisprudence that emerges from the Court. A collegium dominated by senior judges who share the upper-caste, professionally conservative values of the Indian legal elite tends to produce appointments that reproduce those values in the next generation of judges. The structural bias identified earlier in this Part, the tendency of the Supreme Court to protect institutional interests (including its own) more vigorously than the substantive rights of the marginalized, is at least partly a function of the class composition of the judiciary that the collegium system reproduces.

5.2 Executive Pressure and the Compliant Court: Evidence and Analysis

Beyond the formal appointment mechanism, there is extensive and credible evidence of executive pressure on the Supreme Court under the Modi government, including pressure exercised through informal channels that are difficult to document but whose effects are observable in the pattern of judicial decisions.

The most direct evidence emerged from within the Court itself. In January 2018, four senior judges of the Supreme Court, Justice J. Chelameswar, Justice Ranjan Gogoi, Justice M.B. Lokur, and Justice Kurian Joseph, held an unprecedented press conference at which they raised concerns about the assignment of cases to specific benches by the Chief Justice. The press conference statement alleged that the administration of the court was not in order and that important constitutional cases were being assigned to junior judges rather than being heard by constitutionally appropriate benches. The statement specifically noted that this had implications for democracy. This is a remarkable public statement: four sitting senior judges of the country's highest court were publicly suggesting that the institutional mechanisms of the court were being manipulated in ways that affected constitutionally significant cases.

The career trajectory of Justice Ranjan Gogoi after the press conference is revealing in its own right. Gogoi subsequently became Chief Justice of India, and during his tenure delivered the unanimous judgment upholding the abrogation of Article 370, upheld the NRC process in Assam, dismissed a sexual harassment complaint against himself through a process criticized as procedurally deficient, and after retirement was nominated to the Rajya Sabha (the upper house of Parliament) by the Modi government. The sequence of events is a study in what critics have called the "exchange relationship" between judicial deference and subsequent executive reward.

The philosopher and legal theorist Jeremy Waldron, in his work on the rule of law and its connection to human dignity, argues that the rule of law requires not merely the formal existence of a court system but that courts must be genuinely adversarial institutions in which the government faces the same rules as everyone else and cannot control outcomes through pressure on the adjudicators. By this demanding standard, the Indian Supreme Court's performance in politically sensitive cases during the Modi era falls significantly short. The adjudicative process in the Article 370 case, the CAA challenge's indefinite delay, the NJAC case's outcome, and the

collegium controversy all suggest an institution under significant pressure whose formal independence has not always translated into substantive independence of judgment.

5.3 The Bail Jurisprudence and Its Human Rights Consequences

One of the most practically significant dimensions of the Supreme Court's jurisprudence for human rights is the bail jurisprudence in UAPA cases. The standard for bail under Section 43D(5) of the UAPA requires courts to be satisfied that there are "reasonable grounds for believing that the accusation against such person is prima facie true" before granting bail. This provision essentially inverts the normal presumption of innocence: instead of the prosecution bearing the burden of proving guilt, the accused must rebut the appearance of guilt to secure bail.

The Supreme Court's interpretation of this provision in cases like National Investigation Agency v. Zahoor Ahmad Shah Watali in 2019 and subsequent decisions has been so restrictive that bail in UAPA cases has become practically unavailable. The Court has held that at the bail stage, courts should not undertake a deep analysis of the evidence but should simply assess whether the materials prima facie disclose reasonable grounds for the accusation. Since the charge sheet in UAPA cases invariably contains extensive allegations, courts rarely find that the prima facie standard is not met, even when the evidence is contestable or, as in the Bhima Koregaon case, appears to have been fabricated.

The Nikesh Tarachand Shah judgment of the Supreme Court in 2017, which struck down the PMLA bail provision in the old Prevention of Money Laundering Act on the ground that inverting the presumption of innocence violated Article 21, represents a potential constitutional basis for challenging the UAPA bail standard as well. The Court's reluctance to apply the Shah reasoning to the UAPA specifically, despite the structural similarity of the bail inversion problem, reflects the political dimension of UAPA jurisprudence: the Court is more willing to strike down bail restrictions in economic offenses law than in terrorism law, even when the people detained under terrorism law are overwhelmingly not terrorists but dissidents, activists, and journalists.

The Supreme Court's statement in S. Kaushal v. Union of India in 2013, upholding the criminalization of consensual same-sex relations, before that judgment was overruled in Navtej Singh Johar in 2018, illustrates the Court's institutional capacity for major rights-protective decisions. The Navtej Singh Johar judgment represents the Court at its best: engaged, philosophically sophisticated, responsive to the lived experience of the claimants, and willing to override the majoritarian legislature. But the UAPA bail jurisprudence, in its consistent failure to bring this philosophical and jurisprudential sophistication to bear on the rights of counterterrorism detainees, reveals that the Court's rights protection is selective in ways that track political and class boundaries.

5.4 Public Interest Litigation: Revolutionary Instrument or Captured Tool?

The Public Interest Litigation (PIL) mechanism, developed by the Supreme Court in the late 1970s and through the 1980s under Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, represents one of the most creative and consequential innovations in constitutional law in the

world. The PIL mechanism allows any person or organization to approach the Supreme Court or High Courts directly by letter or petition on behalf of those who cannot approach the courts themselves, effectively abolishing the traditional requirement of standing (locus standi) in matters affecting public interest. Through PIL jurisprudence, the Supreme Court expanded fundamental rights to include social and economic rights, ordered the reform of prison conditions, mandated environmental protections, directed the implementation of food security programs, and intervened in numerous areas of social policy where executive inaction was causing harm to vulnerable populations.

The PIL mechanism has been, and remains, a genuine constitutional achievement. But its limitations and distortions have become more pronounced over time, and they must be honestly assessed. The PIL mechanism has been captured, to a significant degree, by the middle class and by those with access to legal counsel, access to the Supreme Court building in New Delhi, and familiarity with the procedures of constitutional courts. The supposed beneficiaries of PIL, the poorest and most marginalized, rarely initiate PILs: they benefit, when they do, from the activities of activist lawyers, civil society organizations, and concerned individuals who file cases on their behalf.

More seriously, the PIL mechanism has increasingly been used as a tool of what critics call "judicial overreach" or what others call "judicial legislation," with the Supreme Court issuing policy directions in areas ranging from environmental regulation to urban planning to labor law that substitute judicial preferences for the democratic choices of elected legislatures. This development is problematic in ways that are not simply a matter of constitutional formalism: when courts make social policy through PIL orders, they do so without the democratic accountability that makes legislative policy choices legitimate, and without the institutional capacity to monitor and enforce complex administrative directions.

Under the Modi government, there has been an observable shift in the kinds of PIL cases that the Supreme Court has been willing to admit and act upon. PILs challenging government policy on contentious political issues (the CAA, Article 370, UAPA) have been admitted but not decided for years. PILs on matters of environmental regulation, sports administration, and other politically peripheral issues receive more active attention. This shift is not provably the product of political direction, but it is consistent with an institution that has become more risk-averse about confronting political challenges to the government of the day.

CHAPTER SIX: THE NINTH SCHEDULE AND THE ARCHITECTURE OF NON-JUSTICIABILITY

6.1 The Ninth Schedule: From Progressive Shield to Arbitrary Immunizer

The Ninth Schedule of the Indian Constitution was introduced by the First Constitutional Amendment in 1951, in direct response to the Supreme Court's decisions striking down land reform legislation in Bihar and Madras on the ground that it violated the right to property under Article 19(1)(f) and Article 31. The First Amendment created the Ninth Schedule, which listed

specific laws that were to be immune from challenge on the ground that they violated the fundamental rights provisions of Part III. The original list included only thirteen statutes, all relating to land reform.

The philosophical justification for the Ninth Schedule was sympathetic. Land reform, the redistribution of land from large landlords to the landless laborers who cultivated it, was the fundamental economic measure necessary to address the structural inequality of rural India and the economic power of the landed upper castes over Dalit and lower-caste rural workers. The Supreme Court, drawing its judges from the upper-caste professional class, was perceived by the government as likely to strike down land reform legislation on property rights grounds, thereby frustrating the social and economic transformation that the Constitution's Directive Principles mandated. The Ninth Schedule was intended to insulate social legislation from this reactionary judicial review.

The problem, which became apparent over subsequent decades, is that the Ninth Schedule's protection from judicial review is not limited to legislation that genuinely advances the rights of the most marginalized. Any legislation placed in the Ninth Schedule, for whatever purpose, is immunized from challenge under the fundamental rights. By 2007, when the Supreme Court partially corrected this problem in I.R. Coelho v. State of Tamil Nadu, the Ninth Schedule contained 284 laws, a substantial number of which had been inserted not to protect progressive social legislation but to protect politically convenient laws from judicial scrutiny.

The Coelho judgment held that laws inserted in the Ninth Schedule after April 24, 1973 (the date of the Kesavananda Bharati judgment establishing the basic structure doctrine) could be reviewed if they violated the basic structure of the Constitution. But this correction was partial: laws inserted before 1973 remain immune from review, and even post-1973 Ninth Schedule laws can only be challenged on basic structure grounds, not on the ground that they violate specific fundamental rights provisions. The Ninth Schedule therefore remains a mechanism through which the legislature can shield legislation from rights review in ways that may or may not serve progressive purposes.

6.2 The Directive Principles: Aspiration Without Obligation

Part IV of the Indian Constitution, titled the Directive Principles of State Policy, contains an impressive list of social and economic objectives, including the right to work, to education, to public assistance in cases of unemployment and disability, to a living wage for workers, to equal pay for equal work, to just and humane working conditions, to participation in the management of industries, to free legal aid, to organization of village panchayats, and to promotion of cottage industries. These provisions express a vision of social democracy that, if realized, would represent a genuinely transformative constitutional commitment.

But Article 37 explicitly provides that the Directive Principles "shall not be enforceable by any court," while also specifying that they are "fundamental in the governance of the country" and that it shall be the "duty of the State to apply these principles in making laws." The result is a constitutional aspiration that is binding in theory but unenforceable in practice. The state is

obligated by Article 37 to implement the Directive Principles but cannot be compelled to do so through litigation.

The Supreme Court has partially bridged the gap between the Directive Principles and enforceable rights through the expansive interpretation of Article 21. As noted in Part One, the Court has read the right to livelihood, to education, to health, to food, and to a clean environment into the Article 21 right to life. This interpretive maneuver has produced some of the most important social rights jurisprudence in the world. But it is also jurisprudentially unstable: it depends on the willingness of specific benches of the Court to maintain an expansive reading of Article 21, which is a matter of judicial philosophy rather than constitutional text and which therefore varies with the composition of the bench.

The more fundamental problem is that neither the Directive Principles nor the Court-ordered social rights have been accompanied by the institutional structures, budgetary commitments, and enforcement mechanisms necessary to translate legal obligations into material realities. The Supreme Court has ordered the implementation of the midday meal scheme, the National Rural Employment Guarantee Act, and numerous other social programs, and these orders have had real effects. But the gap between what the Court has ordered and what has actually been delivered in terms of the welfare of the poorest remains enormous. The architecture of non-justiciability that makes the Directive Principles unenforceable reflects a constitutional design choice that has privileged formal rights over material ones in ways that systematically disadvantage those whose needs are most acute.

CHAPTER SEVEN: FEDERALISM SUBVERTED - THE CENTRALIZATION OF POWER AND ITS HUMAN RIGHTS CONSEQUENCES

7.1 The Constitutional Design of Indian Federalism

The Indian Constitution established a federal system with characteristics unusual among federal systems: it is, in K.C. Wheare's classic formulation, quasi-federal rather than purely federal. The distribution of legislative powers between the Union and the states is organized through three lists in the Seventh Schedule of the Constitution: the Union List (List I) containing subjects on which only Parliament can legislate, the State List (List II) containing subjects on which only the state legislatures can legislate, and the Concurrent List (List III) on which both Parliament and state legislatures can legislate, with central legislation prevailing in case of conflict. The Union List is far longer and includes more economically significant subjects than the State List.

The design of Indian federalism reflects the anxiety of the Constitution framers, writing in the immediate aftermath of partition and in the context of a massive and diverse country with centrifugal forces in multiple directions, about the dangers of excessive decentralization. Ambedkar, in the Constituent Assembly, defended a centralized federation on the grounds that a weak center would be unable to defend India's territorial integrity or manage the social and economic transformation that the Constitution mandated. Nehru shared this view. The result was a constitutional design that gives the Union government substantially greater powers than most

federal constitutions, including the power to intervene in state governance through Article 356, the power to assume central direction of state subject matters during national emergencies, and the power to issue directives to states on matters of national policy.

These centralizing features have been used consistently throughout the post-independence period to extend the reach of central power at the expense of state autonomy, not primarily because the states have mismanaged their responsibilities but because centralization serves the political interests of whichever party controls the Union government. The use of Article 356 to dismiss state governments of opposition parties, documented in Part One, is the most dramatic expression of this centralization imperative. But more routine forms of fiscal pressure, including the conditions attached to centrally sponsored schemes that have the effect of directing state expenditure toward central priorities, have had equally significant effects on the actual exercise of state autonomy.

7.2 The GST Council and Fiscal Federalism

The introduction of the Goods and Services Tax in 2017, which replaced the previous system of state-level sales taxes with a unified national tax framework governed by a GST Council in which the Union government and state governments have formal representation, illustrates the complex relationship between centralizing economic reform and the rights implications of fiscal federalism.

The human rights analysis of the GST focuses on its distributional effects: who bears the burden of the new tax system and who benefits from the revenue it generates. The GST is a consumption tax, and consumption taxes are inherently regressive: they take a higher proportion of the income of poor households, which spend a higher percentage of their income on consumption, than of wealthy households, which save a higher percentage. The specific design of India's GST, with its multiple rate brackets and extensive exemptions, has not succeeded in making the overall system progressive, and the administrative complexity of the GST has disproportionately affected small businesses in the informal sector, which is where the majority of Dalits, Muslims, and lower-caste workers are employed.

The fiscal implications of the GST for state governments' ability to fund social welfare programs are also significant. States have lost the autonomy to set their own tax rates that they previously exercised under the state sales tax regime, and the revenue sharing arrangements under GST have, in some years, fallen short of the compensation commitments made to states during the GST introduction. This reduction in fiscal autonomy reduces states' capacity to design and fund welfare programs responsive to local conditions and priorities, centralizing social policy in ways that make it less responsive to the diverse needs of India's 1.4 billion people.

7.3 The Manipulation of State Governance Through the Governor's Office

The constitutional office of the Governor, appointed by the President of India on the advice of the Union government, is designed to serve as the constitutional head of state governments while remaining a representative of the Union's constitutional authority within the state. The relationship between the elected state government and the appointed Governor is supposed to be

cooperative and ceremonial, with the Governor acting on the advice of the Council of Ministers in virtually all matters, analogous to the relationship between the President of India and the Union Cabinet.

In practice, under the Modi government, the Governor's office has been systematically weaponized as an instrument of political interference in opposition-governed states. Governors in states like Kerala, Tamil Nadu, West Bengal, Telangana, and Jharkhand have used their formal constitutional powers to delay assent to state legislation, to summon floor tests designed to destabilize elected governments, to appoint Vice Chancellors of state universities over the objections of elected governments, and to make public statements criticizing elected state governments in ways inconsistent with their constitutional role.

The human rights dimension of this manipulation of the Governor's office is indirect but real. When the Governor of Kerala refuses to give assent to state welfare legislation or when the Governor of Jharkhand facilitates the destabilization of a government committed to implementing the Forest Rights Act, the practical effect is the denial of rights to the most vulnerable populations of those states. Constitutional conventions that constrain the arbitrary use of the Governor's office are not merely formalities; they are essential elements of a federal system that is designed to allow diverse states with different political preferences to pursue different approaches to social policy.

The Supreme Court addressed the misuse of the Governor's office in Punjab v. Governor of Punjab in November 2023, holding that the Governor is constitutionally required to act on the advice of the elected Council of Ministers and cannot indefinitely withhold assent to Bills passed by the state legislature. This judgment was an important reassertion of constitutional propriety, but the pattern of gubernatorial interference has continued in multiple states since the judgment, suggesting that the ruling has not been implemented consistently.

CHAPTER EIGHT: THE POLITICS OF CONSTITUTIONAL INTERPRETATION - MEANING WITHOUT AMENDMENT

8.1 How Governments Change Constitutional Meaning Without Changing Text

One of the most analytically important dimensions of the subversion of India's constitutional order is the transformation of constitutional meaning that occurs not through formal amendment but through the politics of interpretation: the selection of judges who share the government's constitutional vision, the strategic management of case listings that determines which issues come before which benches, the development of interpretive doctrines that narrow the scope of rights without formally overruling them, and the use of procedural mechanisms to delay or avoid decisive rulings on contested questions.

The legal philosopher Ronald Dworkin, whose work on constitutional interpretation has been extensively applied in Indian legal scholarship, argued that constitutional law is not merely the interpretation of a text but the development of a political morality grounded in the rights of

individuals against the majority. Dworkin's account of law as integrity demands that the best interpretation of the Constitution is the one that makes the overall body of constitutional law most coherent in terms of principle. The progressive expansion of Article 21 in earlier decades of Supreme Court jurisprudence represents this kind of principled development. The contraction of UAPA bail standards and the indefinite delay in the CAA challenge represent its opposite.

The contrast between the early post-Emergency Supreme Court, which produced the Maneka Gandhi judgment in 1978 (holding that Article 21's procedural guarantee has a substantive component), the Bandhua Mukti Morcha judgment in 1984 (extending the right to life to include freedom from bonded labor), and the Olga Tellis judgment in 1985 (reading the right to livelihood into Article 21), and the post-2014 Supreme Court's record on politically sensitive rights cases, is not merely a matter of different judges having different opinions. It represents a systemic shift in the institutional orientation of the Court, a shift from the Court as the institution that gives legal effect to the Constitution's aspirations for justice to the Court as the institution that manages the political consequences of constitutional challenges to the government.

8.2 The Secularism Doctrine and Its Erosion

Secularism as a constitutional principle in India has a distinctive and contested character that differs significantly from the French laicite or the American establishment clause tradition. The Indian constitutional concept of secularism, articulated in the Bommai judgment and numerous others, does not require the strict separation of state and religion but rather a principle of equal treatment of all religions and state neutrality as between them. The state may assist religious institutions for educational and charitable purposes; it may not discriminate between religions in the provision of such assistance.

This "positive secularism" or "principled equidistance" doctrine has been progressively eroded in the Modi era through the combination of legislative action, executive policy, and judicial acquiescence. The CAA introduces religion as a formal criterion of eligibility for citizenship benefits, violating the equality of treatment between religions. The Waqf Amendment subjects Muslim religious institutions to greater state control than their Hindu equivalents. The bulldozer demolitions target Muslim-owned properties at rates statistically inconsistent with non-discriminatory enforcement. The cow protection laws are applied overwhelmingly against Muslims and Dalits, not against the Hindu majority community whose dietary practices they do not affect.

The Supreme Court's failure to apply the secularism component of the basic structure with the same rigor it has applied to judicial independence represents one of the most consequential failures of the contemporary Court. If the Court were to rule, in the CAA case, that the exclusion of Muslims from the accelerated citizenship pathway violates secularism as a basic structure feature and is therefore beyond Parliament's amending power even if a constitutional amendment had been used to introduce it, the ruling would be a landmark that could reset the constitutional trajectory of the Republic. The fact that this ruling has not been issued, after six years of the case's pendency, is a measure of the Court's institutional reticence about confronting the majoritarian politics of the ruling party on its most fundamental constitutional implications.

8.3 The Electoral Bonds Case: A Rare Moment of Constitutional Courage

Against the pattern of judicial reticence in politically sensitive cases, the Supreme Court's judgment in Association for Democratic Reforms v. Union of India, decided unanimously in February 2024, striking down the Electoral Bonds scheme for political funding, stands as a significant exception. The scheme, which allowed corporations and individuals to purchase bonds from the State Bank of India and donate them anonymously to political parties, was challenged on the ground that it violated the right to information of voters about the sources of political funding, which the Court recognized as a component of the fundamental right to freedom of expression under Article 19(1)(a).

The Court's five-judge bench unanimously held that the electoral bonds scheme was unconstitutional because it allowed unlimited corporate funding of political parties without disclosure, corrupting the democratic process in ways incompatible with the constitutional right to information. The judgment directed the SBI to disclose the details of all bonds purchased and redeemed. The disclosure revealed, unsurprisingly, that the BJP had received a dramatically disproportionate share of electoral bonds funding, much of it from companies that had regulatory dealings with the government, raising obvious concerns about quid pro quo corruption.

The Electoral Bonds judgment demonstrates that the Supreme Court retains the institutional capacity for constitutional courage when the political stakes are framed in terms of democratic principles rather than minority rights. But the comparison between the Court's willingness to act decisively in the Electoral Bonds case and its paralysis in the CAA case is revealing: the Court was willing to challenge the government on the process of democracy (how political funding operates) but not on the substance of democratic rights (the equal citizenship of religious minorities). This distinction reflects the Court's residual commitment to formal democratic procedures combined with its reluctance to confront the substantive inequality of treatment between religious communities that the government's policies reflect.

CHAPTER NINE: THE TRANSGENDER PERSONS AMENDMENT ACT 2026 AND THE ASSAULT ON BODILY AUTONOMY

9.1 The NALSA Judgment and the Promise of Gender Justice

The Supreme Court's judgment in National Legal Services Authority v. Union of India, commonly known as the NALSA judgment, decided in April 2014, represented one of the most progressive constitutional decisions in the history of Indian jurisprudence. The Court recognized transgender persons as a "third gender," affirmed their right to self-identification without requiring surgical procedures, directed the government to take affirmative action measures for transgender persons in education and employment, and grounded these conclusions in a rich philosophical engagement with the dignity component of the right to life under Article 21 and the equality guarantee under Articles 14 and 15.

Justice A.K. Sikri's concurring opinion in NALSA drew on psychological, sociological, and anthropological literature to establish that gender identity is a fundamental aspect of personal identity that the state must recognize and respect. The judgment read the constitutional guarantee of liberty broadly enough to protect the freedom to determine one's own gender identity, drawing on the philosophical tradition of personal autonomy and the feminist jurisprudence of theorists like Judith Butler whose work "Gender Trouble" had established that gender is performatively constituted rather than biologically determined.

The Transgender Persons (Protection of Rights) Act of 2019, which was the government's response to the NALSA judgment, was widely criticized by transgender rights organizations and legal scholars as failing to implement the judgment's vision. The Act required a certification process for gender recognition involving district magistrates, fell short of the self-identification right the Court had mandated, and lacked adequate provisions against discrimination. The 2019 Act's deficiencies were the subject of sustained civil society advocacy and some judicial attention.

9.2 The 2026 Amendment: The Bureaucratization of Identity

The Transgender Persons (Protection of Rights) Amendment Bill, 2026, was passed by voice vote in the Lok Sabha on Tuesday 24 March, and subsequently cleared by the Rajya Sabha on Wednesday 25 March, completing its passage through parliament. Amnesty International The new amendment ignores the Supreme Court ruling entirely, replacing self-identification with a system where identity must be verified by a medical board and thereafter recognized by the District Magistrate. Amnesty International

The 2026 Amendment represents a direct legislative reversal of the NALSA judgment and a profound step backward for transgender rights. Its constitutional deficiencies begin with the separation of powers: the legislature cannot simply override a Supreme Court interpretation of fundamental rights through ordinary legislation. The NALSA judgment's recognition of the right to self-identification is grounded in Article 21's guarantee of personal liberty, which the Court has consistently interpreted to include the liberty to make fundamental personal decisions about one's own life and identity. Requiring a medical board to verify and approve gender identity substitutes state determination for personal autonomy in exactly the way that Article 21's personal liberty guarantee prohibits.

This shifts the recognition of gender identity from a matter of personal autonomy and lived experience to one governed by the state through medical and biological criteria, undermining international human rights standards and the Supreme Court judgement. Amnesty International The international standards referred to are the Yogyakarta Principles, adopted in 2006 and updated in 2017, which represent the authoritative interpretation of international human rights law as applied to sexual orientation and gender identity. The Principles specify that each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity, and freedom, and that states have an obligation to ensure that legal recognition of gender identity is based solely on the individual's self-definition.

The law also raises serious concerns about state overreach, particularly in relation to privacy and unlawful surveillance. The law allows medical institutions to share details of gender-affirming procedures with authorities. Amnesty International This provision transforms the medical treatment relationship, which is governed by the principle of confidentiality, into an instrument of state surveillance, requiring medical professionals to become informants about the private health decisions of transgender patients. The Supreme Court's right to privacy judgment in Justice K.S. Puttaswamy v. Union of India in 2017, which established privacy as a fundamental right under Article 21, explicitly recognized that the right to privacy includes decisional privacy regarding matters of intimate personal concern, including sexual orientation and gender identity. The 2026 Amendment's surveillance provisions directly violate this right.

Specifically, it penalizes "compelling", "forcing" or "alluring" a person or a child to outwardly present as transgender, with penalties extending up to life imprisonment. These criminal provisions coupled with the narrow definition of transgender persons, which excludes self-perceived gender identity, potentially allow for the targeting of traditional kinship systems, civil society, medical professionals and parents. Amnesty International The provision creating a new criminal offense of "alluring" someone to present as transgender, with a maximum punishment of life imprisonment, is extraordinary in the breadth of its criminalization. In the context of the 2026 Amendment's medical and administrative gatekeeping of transgender identity, a person who helps a transgender individual navigate the recognition process, or a parent who supports their child's gender identity, or a doctor who provides gender-affirming care, could potentially be construed as "alluring" in violation of this provision.

The 2026 Amendment thus represents the convergence of multiple forms of constitutional violation: violation of the right to personal liberty under Article 21, violation of the right to equality under Article 14 (by applying special restrictions to transgender persons that do not apply to cisgender persons), violation of the right to privacy established in Puttaswamy, and violation of the medical confidentiality that is implicit in the doctor-patient relationship protected by the right to life and dignity. It also represents a direct challenge to the basic structure doctrine because the NALSA judgment's constitutional reasoning is part of the developing jurisprudence on the fundamental right to dignity that is itself a basic structure feature.

CHAPTER TEN: THE INDIAN POLITICAL SYSTEM AS ENABLER OF VIOLATIONS - FROM ELECTORAL AUTHORITARIANISM TO LEGISLATIVE MAJORITARIANISM

10.1 The BJP and the RSS: The Organizational Architecture of Majoritarian Politics

Understanding why the Indian constitutional order has been systematically subverted requires understanding the organizational architecture of the political force that has dominated Indian politics since 2014. The Bharatiya Janata Party is not merely a political party in the conventional sense. It is the electoral and governmental expression of a much larger organizational complex, the Sangh Parivar or RSS family, which includes the Rashtriya Swayamsevak Sangh (the ideological parent organization), the Vishwa Hindu Parishad (the organization promoting Hindu

religious nationalism), the Bajrang Dal (the youth wing associated with cow vigilantism and communal violence), the Akhil Bharatiya Vidyarthi Parishad (the student wing that operates within universities), the Bharatiya Mazdoor Sangh (the trade union wing), and dozens of other organizations operating across civil society.

The organizational characteristics of this network are important for understanding its political behavior. The RSS is not a democratic organization in either its internal governance or its political philosophy. It does not hold contested elections for its leadership. It operates through a system of appointed shakas (local branches) and pracharak (full-time organizational workers) who are trained in a specific ideological tradition. Its members are bound by organizational discipline that demands obedience to organizational directives. This organizational culture, transplanted into the BJP and the state institutions that the BJP controls when in government, creates a political formation with unusually high organizational coherence, unusual capacity for sustained coordinated action, and unusual resistance to accountability through normal democratic mechanisms.

The philosopher and political theorist Hannah Arendt, in "The Origins of Totalitarianism" published in 1951, identified the organizational characteristics of totalitarian movements with a precision that has disturbing resonances in the contemporary Indian context. Arendt described how mass movements based on racial or ethnic nationalism create organizational structures that penetrate civil society and that use the combination of coordinated organization, the cultivation of resentment against specified enemy groups, and the deliberate manufacturing of crisis to undermine the normal functioning of democratic institutions. The RSS-BJP complex is not a totalitarian movement in Arendt's fully developed sense, and the comparison should not be drawn carelessly. But specific features of Arendt's analysis, including the cultivation of an organic nationalism that defines the nation through the exclusion of specified minorities, the penetration of civil society through affiliated organizations, and the deliberate manufacturing of communal crisis through organized mob violence, are analytically applicable.

10.2 Electoral Democracy Without Liberal Democracy: The 2024 Elections

The 2024 Indian general elections, in which the BJP lost its outright majority and was forced to form a coalition government with regional partners, produced an initial commentary suggesting that the electoral system had provided a corrective to the BJP's authoritarian trajectory. Prime Minister Narendra Modi of the Hindu nationalist Bharatiya Janata Party (BJP) won a third term in office in June 2024. Human Rights Watch The coalition character of the new government was expected to constrain the BJP's capacity for further constitutional subversion.

The evidence of the subsequent period does not fully support this optimistic reading. The coalition partners have not consistently challenged the BJP on human rights or minority protection issues. The demolition drives, the UAPA detentions, the FCRA restrictions on civil society, the anti-conversion law enforcement, and the communal violence have continued at significant levels. The Waqf Amendment Act, one of the most significant legislative assaults on minority rights in the Modi era, was passed in 2025 during the coalition government's tenure. The Transgender Amendment of 2026 represents an acceleration rather than a moderation of the cultural and social conservatism that has characterized the BJP's governance.

The theoretical framework of "competitive authoritarianism" developed by Steven Levitsky and Lucan Way in their 2010 work of the same title, and extended in their subsequent analysis of global democratic backsliding, provides the most accurate analytical framework for the current Indian situation. Competitive authoritarianism describes a system in which formal democratic institutions exist and elections are genuine, but in which the governing party systematically uses state resources and institutional advantages to undermine the conditions for genuine democratic competition. Incumbent parties skew the rules, abuse state resources for partisan purposes, harass opponents, co-opt media, and manipulate judicial institutions, not to the point of eliminating elections but to the point of making competitive politics very difficult for the opposition.

India under Modi exhibits many characteristics of competitive authoritarianism: the use of investigative agencies (Enforcement Directorate, CBI) primarily against opposition politicians; the deployment of FCRA restrictions primarily against NGOs critical of the government; the favorable regulatory treatment of media houses owned by government-friendly business groups; the use of bulldozer demolitions as a tool of communal politics that simultaneously rewards the Hindu nationalist base and punishes political opponents; and the manipulation of the Governor's office in opposition-governed states. These practices do not eliminate electoral competition, but they systematically advantage the incumbent party in ways that undermine the democratic equality of political competition.

10.3 The Legislature as Rubber Stamp: Democratic Participation and Its Erosion

The Indian Parliament has historically been the central institution of democratic governance, the forum in which diverse political voices debate and determine the direction of legislation. The quality of parliamentary deliberation in the current period, measured in terms of legislative time, committee review of bills, quality of debate, and minority participation, represents a serious democratic deficit.

Several key pieces of legislation that have significantly impacted human rights have been passed with minimal parliamentary scrutiny. The Citizenship Amendment Act was passed in December 2019, amid widespread protests, without being referred to a parliamentary committee for detailed review. The constitutional changes abrogating Article 370 were introduced and passed within a single parliamentary session, in the absence of the elected representatives of Jammu and Kashmir, without any meaningful consultation with the affected population. The three new criminal codes (BNS, BNSS, BSA) were passed in a single session in which the opposition had been suspended en masse from parliament, denying the legislation even the formal scrutiny of opposition participation.

The suspension of opposition members of parliament, which has occurred with unprecedented frequency under the Modi government, is particularly significant from a democratic legitimacy perspective. A parliament that legislates without opposition participation cannot claim to express the democratic will of the entire nation; it expresses only the will of the ruling majority. When the laws thus passed restrict the rights of minorities, reduce the accountability of the executive, or expand state power in ways that could be used against political opponents, their democratic legitimacy is doubly compromised: they violate the principle of equal rights protection and the principle of equal democratic participation in the legislative process.

The philosopher John Rawls' account of the fair value of political liberties is relevant here. Rawls argued that in a just constitutional order, it is not sufficient that political liberties are formally equal; they must have fair value, meaning that persons with less wealth and fewer political resources must have roughly equal opportunities to influence political decisions and hold political offices as those with more wealth and resources. The systematic manipulation of India's political process through media capture, institutional harassment of opposition, and the silencing of parliamentary scrutiny means that the political liberties of opposition politicians, civil society leaders, and ordinary citizens who disagree with the government have been reduced to formal existence without fair value.

10.4 The 2024-2026 Legislative Record: A Survey of Rights-Restrictive Legislation

The period from the 2024 elections through April 2026 has been characterized by a continuation of the legislative assault on human rights that was documented in earlier parts of this textbook. Beyond the Waqf Amendment and the Transgender Amendment analyzed above, several other legislative developments deserve attention.

Authorities deployed troops to quell protests against the Waqf Amendment Bill, resulting in the deaths of at least three people and at least 150 arrests. Amnesty International The deployment of military force against civilian protesters, combined with the deaths resulting from that deployment, represents a failure of the state's obligation to protect the right to peaceful assembly under Article 19(1)(b) of the Constitution and Article 21 of the ICCPR.

The National Human Rights Commission's declining institutional authority is a measure of the overall deterioration of human rights governance. In March, the National Human Rights Commission was recommended for downgrading to "B" status by the global accreditation body due to concerns about its independence, transparency and effectiveness. Amnesty International The downgrading recommendation from the Global Alliance of National Human Rights Institutions reflects the inadequacy of the NHRC as an accountability mechanism in the current political environment. The NHRC's performance in recent years has been widely criticized for its failure to investigate high-profile cases of minority persecution, its excessive deference to the government in politically sensitive matters, and the appointment processes that have produced a Commission leadership perceived as ideologically aligned with the ruling party.

The IT Rules (Amendment) 2023, which established a government fact-checking unit empowered to identify and order the takedown of online content about the government that it deemed "false or misleading," were struck down by the Bombay High Court in September 2024 as violating freedom of speech and expression. In a win for free speech, the Bombay High Court struck down a 2023 amendment to the Information Technology Rules that empowered the government to establish a fact-checking unit to identify and order the takedown of any online information about itself that it deemed to be false or misleading. Human Rights Watch But the government subsequently re-issued similar rules, reflecting the same dynamic of legislative circumvention of judicial review identified in the analysis of Section 152 of the BNS.

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CHAPTER ELEVEN: INTERNATIONAL LAW VIOLATIONS THROUGH DOMESTIC LEGISLATION - THE LEGAL ANALYSIS

11.1 The Monist-Dualist Debate and India's Constitutional Position

The relationship between international law and domestic law is analyzed in international legal theory through the categories of monism and dualism. Monist theories hold that international law and domestic law are part of a single legal order, with international law taking precedence over domestic law in cases of conflict. Dualist theories hold that international law and domestic law are separate systems, and that international law can produce domestic legal effects only when it is incorporated into domestic law through legislative action. The practical significance of this theoretical distinction is considerable: in a monist system, individuals can invoke international human rights treaties directly in domestic courts; in a dualist system, they can only invoke treaty obligations to the extent they have been transformed into domestic legislation.

India's constitutional position is broadly dualist. Article 51 of the Constitution, which is in the Directive Principles and therefore not directly enforceable, directs the state to foster respect for international law and treaty obligations in its dealings with other nations. But neither treaty ratification nor customary international law is automatically incorporated into Indian domestic law. Treaties require Parliamentary implementation, and customary international law is generally treated as part of Indian common law only to the extent it is not inconsistent with existing statute.

The Supreme Court has partially qualified this dualist position through the Vishaka judgment of 1997, in which it used the Convention on the Elimination of All Forms of Discrimination Against Women and other international instruments to fill a gap in domestic law on sexual harassment at work. This use of international human rights law as a gap-filler, though formally limited to cases where domestic law is absent rather than inconsistent, has been influential in developing a more integrated approach to international human rights obligations in Indian constitutional jurisprudence. But the principle has not been extended to the point of allowing courts to strike down domestic legislation on the ground that it violates India's treaty obligations.

11.2 ICCPR Violations in Domestic Legislation: A Systematic Survey

India ratified the International Covenant on Civil and Political Rights in 1979. As a state party, it is legally bound to ensure that its laws and practices comply with the Covenant. The following systematic survey identifies specific provisions of current Indian legislation that violate India's ICCPR obligations.

Article 9 of the ICCPR guarantees the right to liberty and security, including the right to be promptly informed of any charges, to be brought promptly before a judge, and to be released pending trial except in exceptional circumstances. The UAPA's provision allowing up to 180 days of pre-trial detention without bail in terrorism cases violates the right to be brought promptly before a judge. The BNSS's ninety-day police remand provision violates the requirement of prompt judicial oversight of detention. The Public Safety Act's two-year administrative detention without charge violates the fundamental guarantee of Article 9 that any

deprivation of liberty must be based on grounds and procedures established by law that are consistent with the Covenant.

Article 14 of the ICCPR guarantees the right to a fair trial, including the right to be presumed innocent, the right to be tried without undue delay, and the right to a public hearing. The UAPA bail standard, which effectively requires accused persons to rebut the presumption of guilt rather than placing the burden of proof on the prosecution, violates the presumption of innocence under Article 14(2). The multi-year pre-trial detention in cases like Bhima Koregaon violates the right to be tried without undue delay under Article 14(3)(c). The in-camera proceedings and media restrictions in some security cases violate the right to a public hearing under Article 14(1).

Article 19 of the ICCPR guarantees freedom of expression, subject only to restrictions that are provided by law, necessary for respect of rights of others or protection of national security, public order, or public health or morals, and proportionate to the aim pursued. Section 152 of the BNS, the UAPA's provisions on speech about organizations declared unlawful, and the IT Rules' content takedown mechanisms all impose restrictions on expression that are broader than the necessity and proportionality requirements of Article 19(3) permit. The Human Rights Committee's General Comment 34 is explicit that national security restrictions cannot be used to shield governments from criticism or to suppress information about human rights violations.

Article 18 of the ICCPR guarantees freedom of thought, conscience, and religion, including the freedom to change one's religion or belief. The state anti-conversion laws that criminalize conversion from Hinduism to Christianity or Islam through broadly defined offenses of "allurement" or "inducement" violate Article 18(1)'s protection of the freedom to change religion. The restrictions on conversion are inherently asymmetric: they apply overwhelmingly to conversion from Hinduism and do not apply to the RSS's "ghar wapsi" reconversion programs, revealing their discriminatory intent. The Human Rights Committee has explicitly stated that Article 18 protects the right to change religion and that restrictions on proselytizing must be strictly construed.

Article 27 of the ICCPR provides that in states with ethnic, religious, or linguistic minorities, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. The Waqf Amendment's interference with Muslim religious institutional autonomy, the demolition of mosques and Muslim heritage sites under "bulldozer justice," the anti-conversion laws' targeting of Muslim and Christian communities, and the NRC process's potential to strip documents from Muslim communities all engage India's obligations under Article 27.

11.3 ICESCR Violations: The Social Rights Dimension

India's ratification of the International Covenant on Economic, Social and Cultural Rights in 1979 creates legally binding obligations with respect to the progressive realization of social and economic rights, subject to the maximum of available resources. The UN Committee on Economic, Social and Cultural Rights has developed an authoritative jurisprudence on the

meaning and scope of these obligations through its General Comments and Concluding Observations on state party reports.

Article 6 of the ICESCR guarantees the right to work and to gain one's living by work freely chosen or accepted. The combination of land dispossession of Adivasi communities, the refusal of work guarantees under the MGNREGS (Mahatma Gandhi National Rural Employment Guarantee Scheme) through bureaucratic restrictions, and the labor law reforms that have reduced worker protections for the most vulnerable workers, all engage India's obligations under Article 6. The CESCR Committee's General Comment 18 on the right to work specifies that the state's obligation includes not merely formal legal permission to work but the actual availability of work and the protection of workers' rights.

Article 11 of the ICESCR guarantees the right to an adequate standard of living, including adequate food. India's performance on the right to food is one of the most revealing indicators of the gap between constitutional aspiration and material reality. The Global Hunger Index rankings, the UNICEF data on child malnutrition, and the extensive Supreme Court monitoring of the food security situation all confirm that India has not met its Article 11 obligations despite decades of economic growth. The specific failures of the public distribution system, the exclusion of eligible beneficiaries from food assistance through biometric identification failures, and the diversion of food grain stocks to export markets rather than domestic distribution are all aspects of a systematic failure of food policy that disproportionately affects the Dalit, Adivasi, and Muslim populations at the lowest income levels.

Article 15 of the ICESCR protects the right to take part in cultural life. The systematic destruction of Muslim cultural heritage through the legal mechanisms of the Waqf Amendment and through the physical demolitions of mosques and heritage sites engages this obligation. The suppression of Dalit cultural expression and the delegitimization of Kashmiri cultural identity through decades of security force dominance both engage the cultural rights obligations of Article 15.

CHAPTER TWELVE: WHY THE LAWS MUST CHANGE - A COMPREHENSIVE REFORM FRAMEWORK

12.1 The Case for Constitutional Reform: From Critique to Construction

The analysis throughout this textbook, and particularly in Parts One through Five, has established a comprehensive critical diagnosis of what is wrong with India's constitutional and legal order as it relates to human rights. The time has come to turn from diagnosis to prescription: to articulate what a constitutional and legal order that genuinely protected the rights whose violation has been documented would look like, and what reforms would be necessary to move from the existing order to the ideal one.

This prescription is offered in full awareness of the political obstacles to its implementation. A constitutional order that genuinely protected the human rights of all of India's people, including

its Dalit, Muslim, Kashmiri, Adivasi, and transgender populations, would require the transformation of political conditions that currently obstruct reform rather than advance it. But the specification of the required reforms serves several purposes even in an unfavorable political environment: it clarifies the magnitude of the gap between what is and what should be, provides a framework for advocacy, offers a template for progressive governments in opposition-governed states and at the national level if and when they take power, and constitutes a record of aspiration against which actual practice can be measured.

The reform framework proposed here operates at four levels: constitutional text, legislative reform, institutional reform, and cultural transformation. All four levels are necessary and none is individually sufficient.

12.2 Constitutional Text Reforms

At the level of constitutional text, the following reforms are indicated by the analysis in this textbook.

The Fundamental Rights in Part III should be comprehensively expanded and strengthened. The right to equality under Article 14 should be expanded to explicitly prohibit discrimination on grounds of sexual orientation and gender identity, in addition to the existing grounds of religion, race, caste, sex, and place of birth. The prohibition of untouchability in Article 17 should be strengthened with a positive constitutional mandate for dismantling all structural arrangements that maintain caste hierarchy, including a constitutional obligation to implement, enforce, and monitor the laws against caste discrimination. The right to life under Article 21 should be amended to explicitly include the right to dignity, the right to privacy, the right to a clean environment, and the right to adequate food, water, and housing, removing the dependence of these rights on judicial creativity and giving them explicit constitutional textual grounding.

The Directive Principles in Part IV should be made justiciable. The distinction between justiciable fundamental rights and non-justiciable directive principles has been the constitutional architecture that has allowed India to maintain impressive formal rights guarantees while failing catastrophically on social and economic rights. The transformation of the right to education, the right to work, the right to health, and the right to social security from non-justiciable directives into justiciable fundamental rights would require the state to implement them through legislation that could be challenged in courts, creating accountability mechanisms for social policy that currently do not exist.

The emergency provisions in Articles 352-360 should be fundamentally reformed to eliminate the possibility of their misuse. The conditions for declaration of national emergency should be made more stringent, requiring a higher parliamentary majority and automatic sunset after sixty days without renewed approval. Article 356, which has been the primary tool of partisan abuse of federalism, should be amended to require a two-thirds parliamentary majority rather than a simple majority and to create an independent commission review requirement before the Supreme Court can determine the constitutional validity of the proclamation.

The Ninth Schedule should be repealed or fundamentally revised. Its existence as a zone of immunity from fundamental rights review is inconsistent with the basic structure doctrine's requirement that fundamental rights be protected against legislative invasion. Legislation that genuinely advances the rights of the most marginalized can be protected through appropriate drafting that builds in the constitutional justification rather than through immunity from scrutiny.

AFSPA should be repealed. There is no justification for a law that gives security forces the power to kill without judicial accountability in any territory of a democratic republic. The legitimate security needs that are invoked to justify AFSPA can be addressed through ordinary criminal law amended to allow appropriate intelligence-driven operations, combined with genuine community-based conflict resolution processes that address the underlying grievances that have driven insurgencies in affected regions. The continuation of AFSPA for sixty years with no prosecution and no accountability is not a security measure; it is an institutional expression of the view that the lives of Kashmiris, Nagas, and Manipuris are less valuable than the lives of other Indian citizens.

12.3 Legislative Reform Imperatives

At the legislative level, the following reforms are indicated.

The UAPA should be repealed and replaced with a narrowly drawn counterterrorism statute that includes: a clear and restrictive definition of terrorism grounded in violence rather than political speech; a bail standard that does not invert the presumption of innocence; a maximum pre-trial detention of ninety days for all offenses, with mandatory bail unless the prosecution can demonstrate, to the satisfaction of an independent judge, a specific and identifiable risk of violence, flight, or witness tampering; the elimination of the power to designate individuals as terrorists through executive action without judicial determination; and an independent review mechanism for all designations of organizations as terrorist groups.

The FCRA should be substantially reformed to ensure that restrictions on foreign funding for civil society organizations are narrowly targeted to genuine conflicts of interest and are not applied in a discriminatory manner against organizations critical of the government. The criteria for cancellation and suspension of FCRA registration should be made specific and limited, the appeals process should be strengthened with judicial oversight of all adverse decisions within thirty days, and the law should be made explicitly subject to a public interest test that requires the government to demonstrate that the restriction serves a compelling public interest proportionate to the restriction on civil society freedom.

The new criminal codes should be substantially amended. The ninety-day police remand should be eliminated and replaced with the pre-reform fifteen-day maximum. The new sedition equivalent in Section 152 of the BNS should be replaced with a narrowly drawn incitement provision that applies only to speech that directly and imminently incites violence and that incorporates the Kedar Nath Singh limitations explicitly in the text of the statute. The electronic evidence provisions of the BSA should be reformed to include a comprehensive exclusionary rule for evidence obtained through unlawful surveillance, combined with a data protection framework that genuinely constrains state surveillance.

The Waqf Amendment Act 2025 should be repealed in its entirety and replaced with a revised law that: maintains the waqf by user doctrine with appropriate evidentiary requirements for the recognition of longstanding informal waqf properties; ensures that the composition of all Waqf governance bodies is drawn exclusively from the Muslim community, consistent with Article 26's protection of religious community autonomy; limits the role of government officers to ministerial and registration functions rather than adjudicative ones; and creates independent Waqf Tribunals with professional Islamic legal education requirements for their membership.

The Transgender Persons Act should be fundamentally rewritten to implement the NALSA judgment's self-identification mandate, eliminate the medical board verification requirement, remove the surveillance provisions that allow medical institutions to share patient information with authorities, repeal the criminal provision for "alluring" someone to present as transgender, and create comprehensive anti-discrimination protections for transgender persons in employment, education, housing, and public accommodation.

12.4 Institutional Reform Imperatives

At the institutional level, the judicial appointment process requires fundamental reform. The collegium system should be replaced with a transparent, merit-based process that provides the judiciary with genuine independence from both executive and collegium capture. The reform should include the publication of explicit merit criteria for judicial appointments, the establishment of a search committee with diverse membership including eminent persons from civil society, academic law, and the legal profession, and a confirmation process in Parliament that provides legislative oversight without giving the executive a veto. The international best practice, represented by the appointments processes of the UK Supreme Court and the Canadian Supreme Court, suggests that transparent, merit-based processes with balanced composition are achievable.

The National Human Rights Commission's independence should be strengthened through amendment of the Protection of Human Rights Act to: require the NHRC Chair to be a retired Chief Justice of India or a senior human rights expert with independent standing, rather than a retired Chief Justice who may have worked closely with the government; expand the NHRC's mandate to include investigation of human rights violations by central security forces (currently excluded from the NHRC's jurisdiction); require the publication of all recommendations with specific timelines for government response; and create an automatic escalation mechanism to the Supreme Court when government response to NHRC recommendations is unsatisfactory.

The police must be reformed on the lines recommended by the Police Reforms Committee (Ribeiro Committee) of 1998, the Padmanabhaiah Committee of 2000, and the Supreme Court's directions in the Prakash Singh case of 2006, which remain largely unimplemented. The key reforms are: the separation of the investigation and law and order functions of the police to prevent the use of investigative resources for political purposes; the creation of State Security Commissions with civilian oversight of police functioning; the establishment of Police Complaints Authorities with genuine independence and real investigative powers; and the amendment of the Police Act to create a professional service culture oriented toward the protection of citizens rather than the maintenance of order.

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12.5 Cultural Transformation: The Deepest Requirement

At the deepest level, the constitutional and legislative reforms proposed above will be insufficient without transformation of the political culture that has enabled the violations documented throughout this textbook. Legal reform without cultural transformation produces, at best, well-designed laws that are systematically undermined by the institutional cultures through which they are administered. The history of Indian rights law is full of good laws that have been transformed into instruments of oppression by institutional cultures that resist their purposes.

Cultural transformation requires, at minimum, three processes. First, a sustained national reckoning with caste and its continuing operation. India has not had a national conversation about caste that approaches the seriousness and depth of the conversations that post-apartheid South Africa had about race. The official policy of reservation, while important and necessary, has substituted numerical metrics for the cultural transformation required. A genuine reckoning would require the kind of truth and reconciliation process that Ambedkar himself demanded: an honest accounting of what the caste system has done to Dalit communities and what its continuing operation does every day, combined with a political commitment at all levels of governance to the active dismantling of its structural infrastructure.

Second, a transformation of the educational system to prioritize critical civic education, particularly about the Constitution, human rights, and India's plural traditions. The current educational curriculum, which in BJP-governed states has been progressively reshaped in the direction of Hindu nationalist historiography, provides students with neither the understanding of the Constitution's rights framework nor the historical knowledge of India's diverse civilizational inheritance necessary for the exercise of informed democratic citizenship. A constitutional democracy depends on citizens who understand what the Constitution promises them and are prepared to demand its fulfillment.

Third, a transformation of the media landscape that restores the conditions for genuine press freedom. India now has a complex set of laws that authorities use to target minorities, journalists, and activists. Human Rights Experts The combination of UAPA prosecutions of journalists, FCRA restrictions on media organizations with foreign funding, IT Rules that impose government-directed content moderation, and the ownership concentration in the media sector under government-friendly business groups has created a media environment in which genuinely independent journalism is under sustained institutional pressure. Restoring press freedom requires legal reform, but it also requires the development of economic models for independent journalism that are not dependent on corporate ownership with political interests and not vulnerable to government harassment through regulatory mechanisms.

CHAPTER THIRTEEN: PHILOSOPHICAL FOUNDATIONS OF REFORM - JUSTICE, DIGNITY, AND THE DEMANDS OF PLURALISM

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13.1 The Philosophical Basis for Constitutional Reform: Why Rights Matter

The reform agenda proposed in Chapter Twelve rests on philosophical foundations that deserve explicit articulation. The case for constitutional reform is not merely pragmatic (better laws produce better outcomes) but philosophical: it rests on fundamental claims about what human beings are, what they are owed by the political communities in which they live, and what political authority requires for its legitimacy.

The foundation is the concept of human dignity, understood in the tradition of Kant and developed in contemporary philosophy by theorists from Alan Gewirth to Christine Korsgaard to Axel Honneth to Seyla Benhabib. Human dignity is not a property that some human beings have more than others, or that is conferred by membership in specific communities, or that varies with social rank, caste, religion, or gender. It is an inherent property of every person as a person, grounded in the capacity for rational agency, the ability to set and pursue purposes, to govern one's own life according to one's own conception of what is good, and to be held accountable for one's choices. This capacity is equally present in every human being, and the state's obligation to respect, protect, and facilitate its exercise is therefore equally owed to every human being.

The specific violations documented in this textbook are, on this philosophical analysis, not merely policy failures or governance problems. They are denials of human dignity: the systematic refusal to recognize specific persons and communities as full bearers of the human capacities that ground the fundamental obligation of respect. When a Dalit woman's rape complaint is dismissed by a police officer who treats her testimony as less credible because of her caste, the violation is not merely a failure of the criminal justice system. It is a denial that she is a full person whose experience, suffering, and testimony deserve the respect owed to any human being. When a Kashmiri journalist is imprisoned under the PSA without charge, the violation is not merely a failure of due process. It is the state's assertion that his freedom, his vocation, and his political voice are less valuable than the security preferences of the state that imprisons him.

13.2 Amartya Sen's Idea of Justice: Comparative Rather Than Transcendent

The philosopher Amartya Sen's account of justice in "The Idea of Justice," published in 2009, offers a methodological framework for thinking about constitutional reform that is directly applicable to the Indian context. Sen argues that the search for perfectly just institutions (what he calls the "transcendental institutionalism" of theorists like Rawls) is both philosophically confused and practically irrelevant. What matters is the comparative assessment of actual social arrangements: are the current arrangements more or less just than specific alternatives, and which changes would represent improvements in justice even if they fall short of perfect justice?

Sen's comparative framework is particularly useful for the Indian reform context because it allows us to identify specific changes that would represent genuine improvements in the justice of India's constitutional order without requiring prior resolution of the philosophical debates about the ultimate foundations of justice or the nature of the perfectly just society. The UAPA can be reformed in ways that reduce the injustice of pre-trial detention without resolving the philosophical debate about the ultimate basis of the right to liberty. The police custody

provisions of the BNSS can be reduced without resolving the debate about the ultimate foundations of criminal law. The Waqf Amendment can be repealed without resolving the debate about the ultimate nature of religious freedom in a pluralist society.

Sen's capability approach, which he developed with Martha Nussbaum and which has been applied in earlier chapters of this textbook, provides the substantive content for the comparative assessment: changes that expand the real freedoms of the most constrained are changes in the direction of greater justice, and changes that reduce those real freedoms are changes in the direction of lesser justice. By this standard, virtually every major legislative change analyzed in this chapter, including the new criminal codes, the Waqf Amendment, the Transgender Amendment, and the FCRA restrictions, represents a movement away from justice. And the reforms proposed represent movements toward it.

13.3 Juergen Habermas and the Discourse Ethics of Constitutional Democracy

The philosopher Juergen Habermas, whose work on communicative action, discourse ethics, and constitutional democracy provides one of the most comprehensive contemporary accounts of the philosophical foundations of democratic constitutionalism, offers resources for thinking about the legitimacy conditions of constitutional reform that are directly relevant to the Indian context.

Habermas's discourse ethics holds that norms are valid only if all those affected could agree to them in an ideal discourse, a deliberative process characterized by equal participation, freedom from strategic manipulation, and orientation toward reaching understanding rather than exercising power. This ideal is not achievable in actual political processes, but it provides a regulative ideal against which actual processes can be measured and toward which they should strive. A constitution is legitimately binding, in this account, only if it was produced through, and continues to be revisable through, processes that approximate the conditions of ideal discourse.

Applied to India, Habermas's framework reveals the deep illegitimacy of the current trajectory of constitutional revision. The abrogation of Article 370 without consultation with the affected population of Jammu and Kashmir violates the conditions of democratic legitimacy that Habermas's account requires: the people whose fundamental political status was being changed were given no meaningful opportunity to participate in the decision. The passage of the new criminal codes in a parliament from which the opposition had been suspended violates the requirement that all affected parties have an equal voice in the legislative process. The application of FCRA restrictions to silence civil society organizations violates the requirement that the public sphere remain open to critical voices that challenge the government's narrative.

The positive implication of Habermas's framework for constitutional reform is that genuinely legitimate constitutional change requires processes that are inclusive, deliberative, and transparent. A constitutional convention that genuinely represented the diversity of Indian society, including Dalit, Muslim, Adivasi, women's, and LGBTQ+ voices, that deliberated openly on the fundamental questions of constitutional design, and that produced recommendations through genuinely deliberative rather than majoritarian processes, would have a legitimacy that the current government's constitutional revision lacks. Whether such a process

is politically possible in the current environment is a different question. Whether it is philosophically required is not in doubt.

13.4 Bhimrao Ambedkar's Vision Revisited: Social Democracy as Constitutional Imperative

The return to Ambedkar that every honest engagement with Indian constitutionalism requires is also a return to the most demanding account of what constitutional reform must accomplish. Ambedkar was not merely a constitutional lawyer or a political theorist; he was a person who had experienced the violence of caste in his own body, who had been denied water from wells, seated separately from upper-caste students, excluded from public spaces, and subjected to the thousand daily humiliations that the caste system visits upon those it designates as untouchable. His constitutional project was grounded in this experience, and its demands are correspondingly radical.

Ambedkar's vision of social democracy was not the thin social democracy of universal suffrage and formal equal rights. It was the demand for the actual conditions of equality: the dismantling of the hierarchies of rank, dignity, and opportunity through which the caste system organized Indian society. In his words from the Constituent Assembly, "On the 26th January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions?"

Ambedkar's question, asked on the eve of the Constitution's coming into force, remains unanswered in 2026. The reforms proposed in this chapter are, in a deep sense, attempts to begin answering it: to create a constitutional and legal order in which the formal equality of political rights is matched by the substantive equality of social conditions, in which every person is recognized not merely as a voter but as a full human being whose dignity, voice, and life chances are treated as genuinely equal to those of every other.

CHAPTER FOURTEEN: THE POLITICAL PHILOSOPHY OF CONSTITUTIONAL MOMENT - POSSIBILITIES AND CONSTRAINTS

14.1 Constitutional Moments and Their Conditions

The constitutional theorist Bruce Ackerman, in "We the People," his multi-volume account of constitutional change in the United States, developed the concept of the "constitutional moment": a period of intense political mobilization in which the normal structures of political decision-making are transcended and fundamental questions about the constitution of the political community are reopened and resolved in ways that transform the constitutional order. Constitutional moments, in Ackerman's account, occur when a mobilized citizenry, speaking in

extraordinary rather than normal political forms, establishes new constitutional principles that are subsequently formalized in constitutional text and interpreted by courts.

India has experienced at least one constitutional moment in the post-independence period: the period of the freedom struggle and the constituent assembly drafting that produced the Constitution of 1950. The question this chapter addresses is whether a new constitutional moment, a moment in which the fundamental questions of rights, equality, and democratic governance are reopened and resolved in ways that could transform the constitutional order in a rights-protective direction, is possible in the current Indian political context.

The conditions for constitutional moments, in Ackerman's account, include: a mobilized citizenry engaged in sustained, broad-based political action that transcends normal partisan politics; the articulation of new constitutional principles by political leaders who can claim to speak for the mobilized citizenry; the formal validation of these principles through constitutional amendment or authoritative interpretation; and the consolidation of the new principles through subsequent political practice. Can these conditions be created in India?

The evidence of the period 2019-2026 offers both grounds for pessimism and grounds for cautious optimism. The pessimism is grounded in the scale and comprehensiveness of the constitutional subversion documented throughout this textbook: a government that has systematically weakened civil society, captured the judiciary, manipulated the legislative process, and harassed political opposition is precisely the kind of government that is most resistant to constitutional transformation from below.

The optimism is grounded in the resistance that has not been suppressed. The protests against the CAA in 2019-2020, which brought millions of people into the streets across India's cities and which produced the Shaheen Bagh sit-in, a sustained peaceful occupation of a public space by predominantly Muslim women that lasted over a hundred days before being broken up by police during the COVID pandemic, demonstrated the continued capacity of Indian civil society for sustained democratic mobilization. The farmers' protests of 2020-2021, which ultimately forced the government to repeal three controversial agricultural reform laws, demonstrated the continuing capacity of organized social movements to constrain government policy through sustained non-violent action. The 2024 election result, which denied the BJP its outright majority, demonstrated that the electoral system has not been fully captured by incumbency advantages.

14.2 The International Dimension of Constitutional Reform

The international human rights system, whose limitations as an accountability mechanism for India were analyzed in Part Four, can also play a constructive role in supporting constitutional reform through what the political scientist Beth Simmons calls "mobilization of international law" by domestic actors. Simmons's research, presented in "Mobilizing for Human Rights: International Law in Domestic Politics" published in 2009, demonstrates that international human rights treaties have their greatest impact not when they are enforced by international institutions (which rarely happens) but when domestic civil society organizations use treaty obligations as resources in their domestic advocacy, litigation, and political mobilization.

In the Indian context, this means that treaty bodies' recommendations, special rapporteur reports, and international civil society documentation can be used by Indian lawyers and activists as authoritative external assessments of what Indian law requires, as evidence in domestic litigation challenging rights-restrictive legislation, and as resources in political advocacy for legislative reform. The UN Human Rights Committee's July 2024 Concluding Observations on India's fifth periodic report, which raised specific concerns about the UAPA, FCRA, CAA, minority rights, and the situation in Kashmir, provide precisely this kind of authoritative external assessment. The challenge for Indian civil society is to translate these international assessments into domestic political pressure in contexts where the space for civil society activity has been significantly reduced.

The European Parliament resolution of January 2025, which raised urgent human rights concerns, including "violence, increasing nationalistic rhetoric and divisive policies" against minorities, Human Rights Watch represents a new kind of external assessment: a formal resolution by a major democratic legislature that creates political pressure through reputational costs for a government that presents itself as a democracy to the international community. The proliferation of such external assessments, across multiple international forums and multiple allied democratic countries, creates cumulative pressure that may eventually contribute to the domestic political conditions for constitutional change.

14.3 The Role of the Courts in Constitutional Transformation

The potential role of the Supreme Court in the constitutional transformation analyzed in this chapter is complex and must be assessed realistically. The Court has demonstrated, across its history, both the capacity for constitutional courage and the tendency toward institutional self-protection and political accommodation that limits that courage. The periods of greatest constitutional creativity, from the late 1970s through the mid-1990s, coincided with periods of political competition in which no single party dominated the political landscape and in which the Court could balance between competing political forces without depending on a single powerful patron.

The current moment, in which a dominant ruling party controls central government and has significantly shaped the composition of the Court through the collegium system's workings, is less favorable for judicial activism in the direction of rights protection. But the courts are not a single institutional voice, and the jurisprudential tradition that produced Maneka Gandhi, Bandhua Mukti Morcha, Olga Tellis, Vishaka, Navtej Singh Johar, and the Electoral Bonds judgment, remains present in the legal culture even if it is currently in retreat at the level of institutional decision-making.

The specific areas where judicial intervention in the direction of rights protection remains most viable are: the CAA challenge, where the constitutional arguments are overwhelming and the delay is inexplicable except by reference to political timidity; the ongoing UAPA bail jurisprudence, where the potential to bring Shah-style constitutional reasoning to bear on the bail inversion has not been exhausted; the challenge to the 2026 Transgender Amendment, where the direct conflict with a Supreme Court precedent (NALSA) creates a particularly strong doctrinal basis for judicial intervention; and the continuing monitoring of the Bhima Koregaon cases,

where the forensic evidence of fabrication creates an opportunity for a fundamental judicial reassessment of what "prima facie truth" of the accusation means when the evidence appears to have been manufactured.

CHAPTER FIFTEEN: THE STAKES OF INACTION AND THE DEMANDS OF SOLIDARITY

15.1 What Continues in the Absence of Reform

The analysis in this chapter has proceeded largely in the conditional mode of "what reform would require" and "what could be done." The final chapter returns to the indicative mode, insisting on clarity about what continues, and what is being done in the name of the constitutional order that this Part has documented and condemned, in the absence of reform.

In the absence of UAPA reform, people accused without credible evidence continue to spend years in pre-trial detention, separated from their families, deprived of their professional lives, subjected to conditions of imprisonment that constitute torture in all but name, and denied the fundamental right to liberty that both the Indian Constitution and international law guarantee them. Father Stan Swamy is dead. He died at eighty-three in judicial custody in a case built on planted evidence. The others accused with him remain in various stages of legal proceedings, some released on bail after years of imprisonment, some still facing trial. In their experience is concentrated the meaning of everything this textbook has documented about the use of law as a tool of oppression.

In the absence of anti-conversion law reform, Adivasi and Dalit Christians in Chhattisgarh, Madhya Pradesh, and other states continue to face violence, social boycott, and legal harassment for exercising their constitutional right to choose their religion. Families who have converted as an assertion of their rejection of the caste system that has oppressed them for generations are subjected to precisely the violence and coercion that the anti-conversion laws claim to prohibit, while the laws are used to criminalize the very conversion that was their escape.

In the absence of AFSPA repeal, families in Kashmir and in the northeast continue to live with the knowledge that the soldiers deployed in their communities bear no legal accountability for the deaths they may cause. The Association of Parents of Disappeared Persons continues to maintain its records of the thousands of Kashmiris who disappeared in security force custody. The graves in North Kashmir contain bodies that have never been formally identified, never subjected to independent forensic examination, never made the subject of accountability proceedings. They are the physical residue of decades of security force impunity.

In the absence of Waqf Amendment repeal, Muslim communities across India face the progressive legal exposure of their religious and cultural heritage to administrative challenge and potential transfer. The oldest mosques and shrines may find themselves without the legal documentation that the new law now requires for uninterrupted recognition. The anxiety about what the Act's implementation will mean for specific properties is itself a form of harm: the

uncertainty and threat that the law creates is not merely speculative future harm but present violation of the community's sense of security in its cultural and religious life.

15.2 The Theory of Transformative Constitutionalism

The South African constitutional theorist Karl Klare introduced the concept of "transformative constitutionalism" in his influential 1998 article to describe a kind of constitutional jurisprudence that acknowledges the transformative aspirations of a constitution designed in the aftermath of systemic oppression and reads constitutional provisions in light of those aspirations rather than through the lens of conventional legal formalism. Klare's account was developed specifically for the post-apartheid South African Constitution, which explicitly commits the South African state to the transformation of society in light of the country's apartheid legacy. But its logic is applicable, with appropriate modifications, to the Indian constitutional project.

The Indian Constitution is a transformative constitution in Klare's sense: it was drafted by a constituent assembly that acknowledged the systematic oppression of the majority of India's population through the combined mechanisms of colonialism, caste, and economic exploitation, and it committed the new state to the transformation of those conditions through an ambitious program of rights guarantees, affirmative action, and directive principles mandating social and economic reform. The betrayal of this transformative vision by the political choices of successive governments and the institutional choices of courts and bureaucracies is not merely a policy failure. It is a form of constitutional betrayal, a violation of the compact that the Constitution established between the state and the most vulnerable of its subjects.

Transformative constitutionalism, as Klare develops it, requires courts to read constitutional provisions in their full transformative significance, bringing their interpretive creativity to bear in service of the Constitution's overarching purposes of dismantling structural inequality and building genuine democratic citizenship. The specific jurisprudential moves this requires in the Indian context have been identified throughout this Part: the application of the basic structure doctrine to discriminatory legislation like the CAA; the strict scrutiny of emergency powers legislation under the ICCPR proportionality standard incorporated into Article 21's substantive due process; the use of the right to equality to challenge the Waqf Amendment's selective application to Muslim religious institutions; and the application of the NALSA right to self-identification to invalidate the 2026 Transgender Amendment.

15.3 Solidarity as a Constitutional Value and Its Political Implications

The concept of solidarity, which appears explicitly in the Preamble to the Indian Constitution in the form of "fraternity assuring the dignity of the individual," is among the most neglected of the Constitution's foundational values in both legal doctrine and political practice. The Preamble declares that the Constitution establishes India as a Sovereign Socialist Secular Democratic Republic, resolving to secure to all citizens justice, liberty, equality, and fraternity. Fraternity is the political-philosophical concept that has been most comprehensively abandoned in the period analyzed in this textbook.

Solidarity, as understood in the philosophical tradition from Emile Durkheim through Richard Rorty through Axel Honneth, is the disposition to recognize the suffering of others as a call on one's own response, to understand the wellbeing of the community as inseparable from the wellbeing of its most vulnerable members, and to organize social and political institutions in ways that reflect this recognition. The opposite of solidarity is not merely indifference but the active organization of social life around the exclusion and degradation of specific groups, which is precisely what the violations documented throughout this textbook represent.

The political implications of solidarity as a constitutional value are concrete and demanding. They require that the dominant community, the Hindu majority in India's specific context, recognize that the violation of the rights of Muslims, Dalits, Adivasis, Kashmiris, and transgender persons is a violation that affects the entire constitutional community, not merely the groups directly harmed. This is both a moral claim and a constitutional claim: the Preamble's fraternity principle is part of the constitutional compact, and a state that systematically violates it is in breach of its constitutional foundations.

The solidarity that transformative constitutionalism requires is not sentimental or abstract. It is organized through the specific legal, institutional, and political reforms proposed throughout this chapter. It is expressed through the willingness of judges to apply the Constitution's rights guarantees to the most vulnerable without asking whether doing so serves the interests of the politically powerful. It is enacted through the work of journalists who report on violations that powerful interests seek to suppress, of civil society organizations that document abuses that governments seek to deny, of lawyers who represent clients that governments seek to imprison, of activists who protest injustices that majorities prefer to ignore. These are the practical embodiments of the constitutional value of fraternity, and their protection and support is among the most urgent demands that this textbook has attempted to make.

CONCLUDING ANALYSIS OF PART FIVE: THE CONSTITUTIONAL ORDER AND ITS FUTURES

The analysis in Part Five has traced the constitutional architecture of human rights violations in India through five interlocking dimensions: the theoretical limitations and political distortions of the basic structure doctrine; the legislative regression represented by the new criminal codes, the Waqf Amendment, and the Transgender Amendment; the structural features of emergency powers, federalism, and the judicial system that enable violations; the political mechanisms through which constitutional subversion is accomplished without formal amendment; and the reform framework required to move from the existing constitutional order toward one that genuinely protects the rights of all of India's people.

The central finding of Part Five is that the violations documented throughout this textbook are not external to India's constitutional order but are, in significant measure, produced by it: by specific constitutional provisions that enable the exercise of unconstrained power, by legislative frameworks that criminalize dissent and suppress civil society, by institutional arrangements that subordinate the independence of the judiciary and the National Human Rights Commission to

executive preference, and by the political culture of majoritarian nationalism that the RSS-BJP complex has systematically cultivated and that has, at least temporarily, displaced the democratic pluralism that the Constitution's framers sought to establish.

The philosophical traditions surveyed in this Part, from Ambedkar's democratic socialism through Rawlsian liberalism through Sen's capabilities approach through Habermas's discourse ethics through transformative constitutionalism, converge on a single fundamental demand: that the constitutional order treat every person as an end in themselves, never merely as a means to the purposes of others. The violations documented in this textbook treat Dalits as means to the maintenance of caste hierarchy, Muslims as means to the mobilization of Hindu nationalist politics, Kashmiris as means to territorial security calculations, Adivasis as means to the extraction of natural resources, women as means to the reproduction of patriarchal social structures, and transgender persons as means to the assertion of a gender binary that serves the ideological purposes of a government hostile to the complexity of human experience.

The demand of the Constitution, the demand of international human rights law, and the demand of philosophical reason are the same demand: stop treating these people as means. Recognize their full humanity. Protect their rights. Dismantle the structures through which their degradation is reproduced. Build the institutions through which their genuine equality can be expressed and enforced. This is the demand that Part Five has attempted to specify in the language of law, philosophy, and constitutional theory. The political task of translating this specification into the lived reality of constitutional transformation belongs to the people of India, to the civil society, the opposition politics, the judicial tradition, the diaspora, the international community, and ultimately to the mobilized citizenry whose democratic power is the ultimate source of constitutional authority.

Part Six will examine the specific dimensions of gender and caste violence that intersect with the constitutional failures documented in Part Five, conducting a detailed investigation of the legal frameworks governing violence against women and girls, the institutional failures of the criminal justice system in protecting the most vulnerable, and the relationship between the political culture of Hindutva and the intensification of gendered and caste-based violence in the period 2014 to 2026.

PART SIX: GENDER, CASTE, AND THE ARCHITECTURE OF BODILY VIOLENCE

A Jurisprudential, Philosophical, and Political Investigation into the Structural Violation of Women, Dalit Communities, and the Bodies the State Refuses to Protect

Prefatory Note to Part Six

Part Five of this textbook established the constitutional architecture of violations: the specific provisions, legislative frameworks, institutional arrangements, and political mechanisms through which India's formal rights commitments are systematically betrayed. It concluded by announcing that Part Six would turn to the specific and concrete dimensions of gender and caste

violence, examining the legal frameworks that govern violence against women and girls, the institutional failures of the criminal justice system in protecting the most vulnerable, and the relationship between the political culture of Hindutva and the intensification of gendered and caste-based violence in the period 2014 to 2026.

That is the task of this Part. But Part Six cannot be simply a recitation of atrocities, though the atrocities are real and must be named. It must, in keeping with the intellectual commitments of this textbook, operate at multiple levels simultaneously. It must engage the philosophical traditions that allow us to understand what kind of wrong is being done when a Dalit woman's body is made the site of caste assertion. It must engage the jurisprudential traditions, both Indian and international, that define the legal obligations violated by each category of harm. It must examine the specific legislation that governs these areas and the specific ways in which it fails. It must trace the relationship between ideology and violence, between the political program of Hindu nationalism and the forms of gendered violence that intensify under its cultural dominance. And it must, at every point, insist on the humanity of those who are harmed: on their irreducible personhood, on the specificity of their suffering, and on the moral and legal scandal of a state that permits, facilitates, and sometimes directly commits the violations documented here.

The analysis proceeds across fifteen chapters organized into three broad movements. The first movement, comprising Chapters One through Four, establishes the theoretical and philosophical foundations: the feminist jurisprudence of the body, the theory of sexual violence as a political act, the concept of rape culture and its relationship to institutional impunity, and the specific theoretical traditions that illuminate caste as a structure of gendered domination. The second movement, comprising Chapters Five through Ten, conducts the detailed legal and factual investigation: examining the criminal law framework for sexual violence in India, the SC/ST Prevention of Atrocities Act and its systematic failures, the phenomenon of marital rape and the state's refusal to criminalize it, the use of sexual violence as a tool of political repression, the specific situation of Muslim women at the intersection of religious nationalism and patriarchy, and the phenomenon of digital sexual violence as an emerging frontier of caste and gender oppression. The third movement, comprising Chapters Eleven through Fifteen, situates these specific investigations within the broader theoretical and political frameworks: examining the relationship between Hindutva ideology and the normalization of gender violence, the failures of institutional reform in the post-Nirbhaya era, the international legal dimensions of India's gendered human rights crisis, the philosophical demands of a genuine reform response, and the political conditions and possibilities for transformative change.

CHAPTER ONE: THE BODY AS A SITE OF POLITICAL POWER - THEORETICAL FOUNDATIONS

1.1 The Politics of the Female Body: From Beauvoir to Butler

The philosophical analysis of gender violence must begin where all serious feminist philosophy begins: with the recognition that the female body is not merely a biological fact but a political

site. This recognition, foundational in feminist thought since Simone de Beauvoir's "The Second Sex" in 1949, is perhaps the most important theoretical contribution of feminist philosophy to the analysis of human rights violations against women.

De Beauvoir's central argument was that woman is not born but made: that the social meaning attached to the female body, the norms, expectations, restrictions, and dangers that specific cultures associate with being female, are not natural or inevitable but are products of specific historical and social arrangements that serve specific interests. "One is not born, but rather becomes, a woman," she wrote, and this becoming is a process of socialization into subordination, of learning to inhabit the female body as the object of the male gaze rather than as the subject of one's own experience.

The implications for the analysis of violence against women are profound. If the meaning attached to the female body is socially and politically constructed, then violence against women is not merely interpersonal misconduct but a social and political act: an assertion of the hierarchies of power that the social construction of gender serves to maintain and reproduce. A rape is never merely a sex act committed by one person against another. It is an act embedded in a social context that gives it meaning, that shapes who is vulnerable to it, who commits it, how it is understood by bystanders and institutions, and what consequences follow for perpetrator and victim. In a society organized by the intersection of gender hierarchy and caste hierarchy, the rape of a Dalit woman by an upper-caste man is an act embedded in two overlapping systems of domination, and its meaning, its function, and its consequences must be understood at the level of both.

Judith Butler's development of the theory of gender performativity in "Gender Trouble" (1990) and "Bodies That Matter" (1993) adds another dimension to this analysis. Butler argues that gender is not a property that people have but a performance that they enact, a set of repeated bodily acts through which gender norms are cited and reproduced. This performative account of gender has important implications for understanding sexual violence. Violence against women that punishes transgression of gender norms, such as violence against women who resist sexual advances, who work in public spaces, who organize politically, or who refuse marriages arranged for them, is not merely personal but performative: it reasserts and reinforces the gender norms that the targeted behavior has violated. It disciplines the social body of women as a whole by punishing specific individuals whose behavior has stepped outside the prescribed limits.

In the Indian context, Butler's analysis illuminates the consistent pattern by which violence against women who have, in the perpetrators' or the broader community's understanding, transgressed caste or gender norms is either minimized by the criminal justice system or in some instances treated as partially justified. The victim who was "out at night," who was "dressed inappropriately," who was "talking to men from other castes," whose behavior "invited" the violence: these are the rhetorical moves by which legal institutions participate in the reproduction of the gender norms that the violence enforces.

1.2 Sexual Violence as Political Act: MacKinnon, Brownmiller, and Beyond

Catharine MacKinnon's feminist jurisprudence, developed through decades of groundbreaking scholarship from "Sexual Harassment of Working Women" (1979) through "Feminism Unmodified" (1987) to "Women's Lives, Men's Laws" (2005), provides the most comprehensive theoretical account of sexual violence as a political rather than merely personal phenomenon. MacKinnon's central argument is that sexual violence is not a deviation from normal heterosexual relations but a manifestation of the power relations that structure them: in a society organized around male dominance and female subordination, sexual violence is the extreme end of a continuum that includes a vast range of lesser coercions, harassments, and impositions.

MacKinnon's most famous and most controversial claim is that pornography is a form of gender discrimination because it eroticizes the subordination of women and thereby contributes to the social conditions in which sexual violence occurs and is minimized. This argument has been contested and its political implications have been disputed within the feminist tradition itself, particularly by feminist theorists who emphasize sexual agency and the danger of state regulation of sexual expression. But the underlying theoretical point, that sexual violence must be understood within the broader context of gender inequality and not as an isolated phenomenon, is widely accepted across the feminist tradition and is reflected in the international human rights law of gender-based violence.

Susan Brownmiller's earlier analysis in "Against Our Will: Men, Women and Rape" (1975), which provided the first comprehensive historical and political analysis of rape as a social institution, argued that rape functions as a mechanism of social control: through the ever-present threat of rape, all men keep all women in a state of fear. Brownmiller's formulation has been criticized for its universalism, which tends to obscure the specific ways in which race, caste, and class shape both the commission and the experience of rape. But her core insight that rape is a political institution, not merely an individual crime, remains indispensable.

The intersection of these theoretical frameworks with the specific situation of India produces an analysis that is both illuminating and damning. In India, sexual violence against women is embedded in not one but multiple overlapping structures of domination. Gender hierarchy is the first: the subordination of women to men that is reproduced through family structures, property arrangements, religious norms, cultural practices, and institutional male dominance. Caste hierarchy is the second: the assignment of rank, dignity, and life chances by birth, with the bodies of Dalit women positioned at the intersection of the lowest caste rank and the subordinate gender. Religious hierarchy is the third, with specific forms of targeted sexual violence against Muslim women functioning as instruments of communal domination. Class hierarchy is the fourth, with the economic vulnerability of the rural poor and the landless laboring classes creating specific vulnerabilities to sexual exploitation by landlords, employers, and those with command over livelihood resources.

The interaction of these four hierarchies produces forms of gendered violence that are qualitatively different from those experienced by women who occupy only one or two dimensions of subordination. A Dalit woman agricultural laborer in Uttar Pradesh occupies all four disadvantaged positions simultaneously, and the violence she faces reflects the interaction

of all four. Understanding this requires the analytical tool that feminist theory has developed over the past three decades: the theory of intersectionality.

1.3 Kimberle Crenshaw and the Theory of Intersectionality

Kimberle Crenshaw introduced the concept of intersectionality in her 1989 article "Demarginalizing the Intersection of Race and Sex" and developed it in her 1991 article "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color." Her starting point was an analysis of how Black women in the United States were systematically excluded from both feminist advocacy and anti-racist advocacy because each movement focused on a single axis of subordination: feminist advocacy focused on gender, treating the typical woman as white; anti-racist advocacy focused on race, treating the typical Black person as male. Black women, who faced the specific intersection of both, fell through the gaps.

The concept Crenshaw developed to describe this has become one of the most productive theoretical frameworks in contemporary social science, philosophy, law, and human rights advocacy. Intersectionality holds that social categories of subordination do not operate independently but interact to create specific and qualitatively distinct experiences of oppression. The experience of a Black woman is not simply the experience of being Black plus the experience of being a woman; it is the experience of a specific social position created by the intersection of race and gender, which is different from either racial or gender subordination taken separately.

Applied to India, intersectionality provides the theoretical language for analyzing the situation of Dalit women. Their experience is not the experience of being Dalit plus the experience of being a woman. It is the experience of a specific social position created by the intersection of caste, gender, and typically class, which creates vulnerabilities, forms of violence, and barriers to justice that are qualitatively different from those faced by either Dalit men or non-Dalit women. The Hathras case of September 2020, in which a nineteen-year-old Dalit woman was gang-raped by four Thakur men, her tongue cut off, her spine broken, and her body cremated by the police at night against the explicit wishes of her family before an adequate forensic examination could be conducted, illustrates this with shattering clarity. The perpetrators acted with the confidence that comes from occupying both the dominant caste and dominant gender positions. The police acted with the institutional indifference that comes from a caste-hierarchical culture that treats the bodies of Dalit women as beyond the full protection of the law. The state, in the form of the Uttar Pradesh government under Chief Minister Adityanath, responded by labeling the incident a political conspiracy, restricting access to the village, and deploying the machinery of government against the victim's family rather than the perpetrators.

The jurisprudential reception of intersectionality in Indian courts has been uneven but not entirely absent. The Supreme Court's recognition of intersectionality in Patan Jamal Vali v. State of Andhra Pradesh (2021), in which the Court acknowledged that the rape of a blind Scheduled Caste woman required an "intersectional lens" because multiple sources of oppression operated cumulatively to produce a specific experience of subordination, marked a significant doctrinal development. The Court opined that "it becomes imperative to use an intersectional lens to

evaluate how multiple sources of oppression operate cumulatively to produce a specific experience of subordination," affirming the need to move beyond a single-axis model of discrimination to reinvigorate sentencing policy from the perspective of the victim. Tclf The Justice JS Verma Committee report, produced in the aftermath of the 2012 Nirbhaya gang rape and the public protests that followed, had already acknowledged that "a woman may suffer a double disadvantage because she is a woman and because she belongs to a caste, tribe, community, or religion which is disadvantaged."

But the recognition of intersectionality in doctrine has not been matched by its consistent application in practice. The conviction rate for rape under the SC/ST Prevention of Atrocities Act is a fraction of the already low conviction rate for rape under general criminal law. The conviction rate of rape cases involving Dalit women is at a mere 2%, as opposed to the national average of 25%. Citizens for Justice and Peace This catastrophic disparity between the formal recognition of intersectional vulnerability and the actual delivery of justice is not incidental. It is the product of the same caste hierarchy that motivates the violence in the first place, operating now through the institutional culture of police, prosecution, and courts rather than through the direct action of upper-caste perpetrators.

1.4 The Body in Caste Theory: Ambedkar, Roy, and the Politics of Touch

Ambedkar's analysis of the caste system places the body at the center of the structure of domination in a way that is both philosophically original and politically powerful. His argument in "Annihilation of Caste" (1936) is not merely that the caste system involves discrimination or even oppression; it is that it involves the systematic denial of humanity to those designated as untouchable. The designation of untouchability is precisely a designation of the body: the Dalit body is constructed as ritually polluting, as something whose touch, whose proximity, whose shadow, transmits a contamination that degrades the bodies of those designated as pure. This construction of the Dalit body as inherently defiling is the foundation of a system of spatial, social, and physical exclusions that extends from the prohibition on sharing water sources through the segregation of residential space to the forms of physical violence, including rape, through which upper-caste domination is enforced.

Arundhati Roy's introduction to the Annotated Edition of "Annihilation of Caste" (2014) develops this analysis in a contemporary direction that is deeply relevant to the analysis of gendered caste violence. Roy argues that untouchability is not merely a historical relic but a living system that continues to organize the experience of hundreds of millions of people in ways that official rhetoric about constitutional equality systematically denies. She insists that the violence done to Dalit bodies, including sexual violence, must be understood not as the behavior of individual bad actors but as the expression of a system in which the Dalit body is socially constructed as a legitimate target for domination.

The theoretical tradition of Dalit feminism, developed by scholars and activists including Gopal Guru, Sharmila Rege, Uma Chakravarti, and Paromita Vohra, extends this analysis by insisting that the specifically gendered forms of caste violence cannot be understood through either mainstream feminist theory, which has tended to treat women as a homogeneous category, or through mainstream Dalit theory, which has tended to treat the Dalit community as represented

by Dalit men. Dalit feminist theory argues that the specific experience of Dalit women, at the intersection of caste and gender, requires its own theoretical vocabulary and its own political program.

Uma Chakravarti's concept of "brahmanical patriarchy," developed in her influential 1993 essay "Conceptualising Brahmanical Patriarchy in Early India," provides the historical foundation for this analysis. Chakravarti argues that the caste system and the system of gender hierarchy are not parallel but interlocking structures: the control of female sexuality, particularly the sexuality of upper-caste women, has been central to the reproduction of caste purity across generations. The prohibition on intercaste marriage, enforced through the social control of women's bodies, is the biological mechanism through which caste boundaries are maintained. The inverse of this control of upper-caste female sexuality is the treatment of Dalit female sexuality as beyond protection: if the body of the Dalit woman is already constructed as impure, its violation by upper-caste men does not contaminate the upper-caste man but merely confirms the existing hierarchy.

This theoretical framework, brahmanical patriarchy, is not academic abstraction. It is the cultural logic that explains why the rape of Dalit women by upper-caste men is so frequently treated by police, courts, and communities as less serious than comparable violence involving women from dominant castes. It explains why the Bhanwari Devi case, decided by a Rajasthan Sessions Court in 1995, could produce the judicial reasoning that an upper-caste man could not have defiled himself by raping a lower-caste woman, reasoning so offensive to any conception of legal equality or human dignity that it prompted the Supreme Court to develop the Vishaka guidelines on sexual harassment. It explains why the Hathras police could cremate a rape victim's body at night against her family's wishes, because the body of a Dalit woman has, in the deep cultural logic of the system, always been available for upper-caste disposal.

1.5 Rape Culture: Theory, Definition, and the Indian Context

The concept of rape culture, which entered popular discourse following the "SlutWalk" movements of the 2010s but has a longer theoretical history in feminist sociology and criminology, is indispensable for understanding the Indian situation. Rape culture refers to a social environment in which sexual violence against women is normalized, trivialized, and in some cases implicitly or explicitly encouraged through pervasive cultural attitudes, institutional practices, and social norms.

The theoretical account of rape culture developed by feminist scholars including Emilie Buchwald, Pamela Fletcher, and Martha Roth in "Transforming a Rape Culture" (1993) identifies the key mechanisms through which rape culture operates: victim blaming, which shifts responsibility for sexual violence from perpetrators to victims; sexual objectification, which treats women's bodies as instruments for male pleasure rather than as belonging to subjects with rights; the trivialization of rape through humor, media portrayals, and institutional minimization; and the normalization of male sexual aggression as a natural feature of masculine identity.

In India, all of these mechanisms are abundantly present and are reinforced by specific cultural, religious, and political formations that give them local content. The two-finger test, a procedure used by doctors conducting medical examinations of rape complainants that purported to assess

the "habituation" to sexual intercourse of the victim, and that was used routinely by Indian forensic doctors for decades as a basis for suggesting that rape victims were "habituated" and therefore their testimony less credible, is one of the most vivid examples of institutional rape culture. The Supreme Court finally prohibited the two-finger test in its 2022 decision in State of Jharkhand v. Shailendra Kumar Rai, finding it unscientific, violative of the survivor's dignity, and inadmissible in evidence. But the fact that this practice continued in forensic medicine and was admitted in courts for decades after the right to dignity was established as a constitutional requirement is a measure of the depth of the institutional culture that sustains rape culture in India.

The response of political leaders to cases of sexual violence is another revealing indicator of rape culture. Insensitivity to gender violence has been the standard response of leaders of the ruling Bharatiya Janata Party since it came to power in 2014. Ministers and officials have accused those that speak out against rape culture of defaming India, and in response to documented harassment of women travelers, the National Commission for Women chief accused observers of "defaming whole country." The Diplomat This pattern of treating criticism of sexual violence as an attack on national honor, rather than treating sexual violence itself as an attack on the dignity and rights of women, is a textbook manifestation of rape culture at the institutional and political level.

The statistics, while incomplete because underreporting of sexual violence is pervasive, are alarming enough to indicate a crisis of systemic proportion. According to data compiled by the National Crime Records Bureau, the number of cases of sexual violence increased from 428,278 in 2021 to 445,858 in 2022. In 2022, 31,516 cases of rape were reported, an average of 86 rape cases per day. The Diplomat And these figures reflect only reported cases. The actual incidence, accounting for the vast majority of cases that are never reported due to fear, shame, social pressure, distrust of police, and the anticipated failure of the justice system to deliver accountability, is many multiples higher.

1.6 The Theoretical Concept of Structural Impunity

The concept of structural impunity, as distinct from specific instances of failure to prosecute, is important for understanding the systemic character of the problem. Impunity, in its most specific legal sense, refers to the failure to prosecute and punish perpetrators of human rights violations. But structural impunity refers to a condition in which the entire social, institutional, and political system operates to prevent accountability for violations: not merely by specific acts of institutional corruption or negligence, but by the deep cultural logic through which violations are normalized, perpetrators are protected, and survivors are silenced.

Naomi Zack's philosophical analysis in "White Privilege and Black Rights" (2015), applied to the Indian context by several scholars of caste, suggests that structural impunity operates through what she calls "institutional privilege": the condition in which membership in a dominant group provides informal but systematic protection from the consequences of violence. In India, upper-caste perpetrators of violence against Dalit women benefit from institutional privilege at every stage of the criminal justice process: in the police officer's decision about whether to register a complaint, in the investigation's thoroughness, in the prosecution's vigor, in the court's assessment of credibility, and in the sentencing decision if conviction occurs. This institutional

privilege does not require individual police officers or judges to be explicitly motivated by caste prejudice at every moment, though many are. It operates through the accumulated weight of a culture in which the violence of caste is normalized, in which Dalit testimony is systematically undervalued, and in which the interests of dominant castes in avoiding accountability are treated as legitimate considerations in institutional decision-making.

The international human rights concept of due diligence provides the legal framework through which structural impunity can be held to international standards. The Inter-American Court of Human Rights established in the Cotton Field case (Gonzalez and Others v. Mexico, 2009) that a state's failure to prevent, investigate, prosecute, and punish gender-based violence with appropriate diligence constitutes a violation of the right to life, the right to personal integrity, and the right to judicial protection. The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) has developed this standard in General Recommendation 35 (2017), which holds that gender-based violence against women is a form of discrimination that states must address through comprehensive due diligence measures including prevention, protection, prosecution, punishment, and reparation. India's systematic failure of due diligence with respect to violence against Dalit, Muslim, and Adivasi women engages these international legal obligations in ways that have not been adequately recognized in Indian constitutional jurisprudence.

CHAPTER TWO: THE JURISPRUDENCE OF SEXUAL VIOLENCE IN INDIA - LEGISLATIVE HISTORY AND ITS LIMITS

2.1 The Evolution of Rape Law in India

The law of sexual violence in India has undergone significant formal development since independence, but each step of development has been accompanied by persistent failures of implementation that reveal the gap between legislative promise and social reality. Understanding this legislative history requires understanding both what each reform achieved and what it systematically refused to address.

The Indian Penal Code provision on rape, originally Section 375 enacted in 1860, defined rape in terms of carnal knowledge accomplished by force, threats, or without consent. The original provision was deeply inadequate even by the standards of its colonial-era formulation: it defined consent in terms of the absence of resistance, made penetration the defining act, and excluded from its scope the rape of a wife by her husband on the explicit ground that marriage implied permanent consent. The marital rape exception was not merely a technical legal provision; it was an ideological statement about the nature of marriage as a form of property relationship in which the wife's body was made permanently available to the husband.

The reform process began after the Mathura rape case, decided by the Supreme Court in Tukaram v. State of Maharashtra (1978), in which the Court acquitted two police officers who had raped a sixteen-year-old tribal girl in police custody on the ground that she was "habituated to sexual intercourse" and that the absence of physical injuries indicated consent. The decision

prompted massive public protest led by feminist academics and activists, who wrote an open letter to the Chief Justice of India condemning the ruling. The Criminal Law Amendment Act of 1983 responded to this protest by introducing significant changes: shifting the burden of proof in cases of custodial rape, introducing new categories of aggravated rape with higher minimum sentences, and restricting the ability of defense lawyers to cross-examine rape survivors on their past sexual history.

But the 1983 amendments left the fundamental definition of rape unchanged, retained the marital rape exception, and did not address the structural barriers to reporting and justice that affected the vast majority of survivors. The next major reform came three decades later, following the gang rape and murder of a young woman in New Delhi on December 16, 2012. The victim, whose case became known internationally under the name Nirbhaya, was a twenty-three-year-old physiotherapy student who was brutally assaulted by six men on a private bus. She died of her injuries on December 29, 2012. The protests that followed were the largest feminist mobilization in India's history.

The Criminal Law Amendment Act of 2013, enacted in response to the Nirbhaya protests and based partly on the recommendations of the Justice JS Verma Committee, introduced substantial reforms. It expanded the definition of rape to include a wider range of non-consensual sexual acts, introduced an affirmative standard of consent (replacing the previous definition based on the absence of resistance), created new offenses including voyeurism, stalking, and acid attacks with severe penalties, and introduced enhanced penalties for aggravated forms of rape including custodial rape, gang rape, and rape resulting in death. The minimum sentence for rape was increased to seven years, and to ten years for aggravated rape.

The 2013 reforms were significant but critically incomplete. The marital rape exception was retained, despite the Verma Committee's recommendation that it be removed. The recommendations of feminist organizations regarding the criminalization of marital rape, the recognition of a broader right to sexual autonomy, and the introduction of special procedures for Dalit and Adivasi complainants were not incorporated. The structural issues of police culture, judicial gender bias, forensic inadequacy, and the absence of meaningful victim support services were addressed only marginally. And the specific vulnerability of Dalit, Muslim, and Adivasi women to intersectional violence was not addressed through any targeted provision.

The Bharatiya Nyaya Sanhita (BNS) of 2023, which replaced the Indian Penal Code, preserved the substantive framework of the 2013 reforms, including the expanded definition of rape and the affirmative consent standard, while renaming and renumbering the provisions. The marital rape exception was retained in the new code. The BNS thus represents a missed opportunity to address one of the most fundamental failures of Indian rape law.

2.2 The Marital Rape Exception: A Sustained Jurisprudential Controversy

The marital rape exception, contained in Exception 2 to Section 375 of the IPC and now in the corresponding provision of the BNS, holds that sexual intercourse by a husband with his wife (the wife not being under fifteen years of age) is not rape. This exception has been one of the most controversial provisions in Indian criminal law, and its persistence in the face of sustained

feminist and legal challenge illustrates the power of patriarchal ideology in shaping legislative outcomes even when the formal arguments for reform are overwhelming.

The philosophical basis for the exception was stated explicitly by Sir Matthew Hale, the seventeenth-century English jurist, who wrote in his "History of the Pleas of the Crown" that a husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract. This fictional "implied consent" theory treats marriage as the permanent surrender of a woman's bodily autonomy and her sexual self-determination to her husband. It treats the wife's body as the husband's property, available for his use without limit.

The philosophical bankruptcy of this position from any modern conception of rights is obvious. The right to bodily autonomy, which the Supreme Court recognized as part of the right to life under Article 21 in the Suchita Srivastava case (2009), and which the Puttaswamy privacy judgment of 2017 elevated to a fundamental constitutional principle, is incompatible with a legal rule that permanently suspends this right within marriage. A woman does not surrender her right to bodily autonomy by marrying. She does not surrender the right to say no to any sexual act at any time. The marriage contract, properly understood in terms of modern rights theory, creates mutual obligations of fidelity and support but does not create a property right over the wife's body.

The legal challenge to the marital rape exception reached a critical juncture in the Delhi High Court's divided judgment in RIT Foundation v. Union of India (2022). A two-judge bench produced a split decision: Justice Rajiv Shakdher held that the exception was unconstitutional on multiple grounds including violation of the right to equality (Article 14), the right against discrimination (Article 15), the right to dignity and bodily autonomy (Article 21), and the right to sexual autonomy recognized in Navtej Singh Johar. Justice C. Hari Shankar held that the exception was constitutionally valid, resting his analysis on the government's argument that the removal of the exception would destabilize the institution of marriage and create the risk of false accusations. The split decision created the ideal conditions for a Supreme Court resolution, but as of the writing of this Part, the Supreme Court challenge remains pending without a clear timeline for decision.

The government's arguments against criminalization of marital rape have been repeatedly exposed as empirically unfounded and philosophically untenable. The argument that criminalization would be used for false accusations is paternalistic and rests on a presumption of female dishonesty that applies equally to all rape accusations and has never been accepted as a ground for not criminalizing any other form of sexual violence. The argument that it would destabilize marriage treats the stabilization of a patriarchal institution as more important than the protection of women's fundamental rights within that institution, precisely reversing the constitutional priority. The argument that India's social fabric is not ready for such a change is a variant of the argument that rights reform must wait for social consensus: an argument that Ambedkar specifically and explicitly rejected in the context of caste reform, and that has been rejected by every serious theorist of rights from Rawls to Dworkin.

The international human rights dimension of the marital rape exception is clear and unambiguous. The CEDAW Committee has consistently held that the failure to criminalize marital rape constitutes discrimination against women in violation of CEDAW. General Recommendation 35 of 2017 specifically states that the marital rape exception is a discriminatory provision that must be eliminated. The UN Special Rapporteur on Violence against Women has repeatedly called on India to criminalize marital rape. The Human Rights Committee's review of India's ICCPR compliance has noted concern about the marital rape exception as a violation of Article 3 (gender equality) and Article 7 (prohibition of cruel, inhuman or degrading treatment). India's retention of the exception in the face of these authoritative international assessments constitutes a deliberate choice to maintain gender discrimination in criminal law.

2.3 The SC/ST Prevention of Atrocities Act: Design, Failures, and the Limits of Protective Legislation

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, commonly known as the Atrocities Act or the PoA Act, is the primary legislative instrument designed to protect Dalit and Adivasi communities from caste-based violence and discrimination. The Act was enacted in recognition of the systematic failure of ordinary criminal law to address caste violence, a failure produced by the same structural forces, police bias, prosecutorial indifference, and judicial undervaluation of Dalit testimony, that are analyzed throughout this textbook.

The Act is notable for several features that represent real legislative advances. It creates specific offenses for forms of violence and humiliation that are specifically caste-based, including forcing a member of a Scheduled Caste or Scheduled Tribe to drink or eat any inedible matter, to do any action that damages the dignity of the person, or to parade a person naked. Its 2016 amendment added new offenses including the imposition of social or economic boycotts, the prevention of use of public spaces on grounds of caste, and the garland of footwear or forcible tonsure of Scheduled Caste or Scheduled Tribe members. The Act provides for the establishment of special courts to try atrocity cases, for special public prosecutors, and for relief and rehabilitation of victims.

The Act's critical limitation, however, lies in the requirement under Section 3(2)(v) that for the aggravated offense of rape under the Act, it must be proved not merely that the rape occurred, but that it occurred because the victim was a member of a Scheduled Caste or Scheduled Tribe. This causation requirement, combined with the willingness of courts to acquit on the Atrocities Act charges while convicting under ordinary IPC rape provisions, has created a doctrinal pattern in which the caste dimension of rape is systematically erased from the legal record. Around 65 percent of perpetrators are being acquitted under the PoA Act while enjoying the status of being dominant, rich, politically approachable and powerful people. The PoA Act is manipulated with an intention to remove the caste dynamic from the incidents. OHCHR

The practical consequences of this pattern are devastating. When the caste dimension of rape is erased from the conviction, the specific message of the violation, that Dalit women's bodies are available for upper-caste assertion of power, goes unnamed and unpunished. The perpetrator is convicted as a rapist but not as a caste oppressor. The victim is recognized as a rape survivor but

not as a victim of the specifically caste-based form of assault that was committed against her. The social meaning of the violence is denied legal recognition, and the structural conditions that produced it are left undisturbed.

The Supreme Court's decision in Subhash Kashinath Mahajan v. State of Maharashtra (2018), which introduced requirements for preliminary investigation before arrest in PoA cases and restricted the application of the presumption of guilt, was one of the most legally and politically controversial decisions of the past decade. The decision was widely criticized by Dalit rights organizations as dramatically weakening the Act's protective function by introducing procedural barriers to arrest that do not exist for other serious criminal offenses. The subsequent mass protests across India on April 2, 2018, known as the "Bharat Bandh," were a powerful demonstration of the Dalit community's recognition that the Court had undermined a key protection. The government eventually passed an amendment to the Act in 2018 to restore the original arrest provisions, but the episode revealed the precariousness of legislative protection for Dalit rights when it depends on judicial deference that can be withdrawn at any moment.

Of the 35,487 incidents of rape reported under the SC/ST PoA Act from 2014 to 2022, charge sheets were filed for 90.17 percent of them, with a pendency of 23.45 percent of cases at the end of the year 2022. The highest pendency rate is recorded at 50.43 percent for insult to the modesty of Dalit women. Idsn These statistics capture the formal dimension of the legal process but conceal the far more important fact of what happens in the cases that proceed: the systematic manipulation of evidence, the intimidation of witnesses, the pressure on families to settle out of court, and the judicial reasoning that discounts Dalit testimony.

2.4 The Criminal Justice System and the Production of Injustice

The criminal justice system in India, as it encounters cases of sexual violence against women and particularly against Dalit, Muslim, and Adivasi women, does not merely fail to deliver justice. It actively produces injustice. This distinction is important. Failure suggests a system that is trying to do the right thing but is falling short for reasons of capacity, resource, or error. Production of injustice suggests a system whose institutional culture systematically generates outcomes that disadvantage the most vulnerable complainants and protect the most powerful perpetrators.

The police are the first point of contact for a sexual violence survivor who seeks legal recourse, and the police response is determinative in a large proportion of cases. The failure to register First Information Reports is a systematic pattern rather than an occasional deviation. Police regularly refuse to register cases, declare cases false, or coerce survivors into accepting out-of-court settlements. Equality Now When a Dalit woman approaches a police station dominated by upper-caste officers to report a rape by a man from a dominant caste, she enters an institution whose culture treats her account with default suspicion and whose personnel may have personal or community ties to the perpetrator. The incentives within the police system do not reward the careful investigation of Dalit rape complaints; they reward the avoidance of conflict with dominant caste communities and the maintenance of the social order that produces those communities' support for the police establishment.

The investigation stage is equally compromised. Forensic evidence in rape cases is critically important both for establishing the occurrence of the sexual act and for identifying the perpetrator. The prompt and careful collection of forensic evidence by trained personnel is standard practice in effective criminal justice systems. In India, particularly in rural areas where the vast majority of Dalit rape cases occur, forensic capacity is grossly inadequate, collection is often delayed, chain of custody is poorly maintained, and the forensic reports that are eventually produced are frequently inadequate for prosecution purposes. The manipulation of forensic evidence is also documented: police manipulated vital evidence in favor of perpetrators belonging to upper caste OHCHR, including in highly publicized cases that attracted national and international attention.

The prosecution stage adds further institutional failures. Special public prosecutors mandated by the PoA Act are in many cases inadequately trained in the specific legal requirements of PoA prosecutions, underpaid, and under pressure from the same social forces that compromised the investigation. The preparation of prosecution witnesses is often inadequate. The cross-examination of survivors on the stand, even under the restrictions introduced by the 2013 amendments on questions about past sexual history, continues to be conducted in ways that are intimidating, invasive, and designed to undermine rather than clarify.

The courts, which should be the last line of protection against the failures of police and prosecution, have their own institutional failures. Gender bias in judicial decision-making in sexual violence cases is documented extensively. Women's negotiations towards achieving justice are elusive due to patriarchal, cultural and caste norms. The expectation of compromise permeates courts, even in rape cases. Gender bias plagues the criminal justice administration. Taylor & Francis Online Judges who reflect the dominant social consensus that positions women and Dalit communities as less than fully credible, who bring to their assessment of evidence the cultural assumption that rape accusations by women of compromised social standing are inherently suspect, produce outcomes that are formally within the discretion of judicial decision-making but are substantively discriminatory.

The sentences imposed in the cases that do result in conviction are another dimension of the problem. The minimum sentences introduced by the 2013 reforms were an important change, but judicial sentencing continues to be shaped by factors that should be irrelevant to the determination of just punishment: the "provocation" supposedly provided by the victim's behavior, the "character" of the victim, the "education" or "social standing" of the perpetrator, and the "disruption" to the perpetrator's life that severe punishment would cause. All of these factors systematically favor upper-caste, educated, socially connected perpetrators over the very profile of perpetrator who is most likely to commit caste-based rape with impunity.

CHAPTER THREE: THE HATHRAS CASE AND WHAT IT REVEALS

3.1 The Anatomy of a Defining Atrocity

The Hathras case of September 2020 is not merely a single horrific incident. It is a diagnostic event: a case in which every dimension of the structural crisis analyzed in this Part, and indeed in this entire textbook, was simultaneously present and visible with unusual clarity. For this reason, it deserves extended analysis as an illustration of the systemic character of the problem.

On September 14, 2020, a Dalit woman was gang-raped in Uttar Pradesh's Hathras. The mother of the victim heard her daughter's screams from a nearby field and found her covered in blood with her tongue cut off. When the family approached the nearby police station for the registration of the FIR, the police delayed the registration of the FIR and asked the family to take the victim away. On September 30, 2020, her body was cremated by the Uttar Pradesh police without the consent of her family. The family was locked in their house during the cremation. The police officers who were responsible for the forceful cremation were never held accountable either by the state or the judiciary. Idsn

The victim was nineteen years old. She was a Dalit woman from the Valmiki community, which is among the most marginalized of Dalit subgroups. The four accused were Thakur men, from the dominant caste in the region. She died of her injuries at a Delhi hospital on September 29, 2020, sixteen days after the assault.

The police response from the beginning was oriented toward minimizing, denying, and suppressing the case rather than investigating it. The initial FIR, when finally registered, did not include rape charges. Uttar Pradesh police officials gave contradictory statements about whether rape had occurred, including claims that forensic tests had found no evidence of rape despite the fact that the forensic examination was conducted thirteen days after the assault, well outside the window in which physical evidence of rape is reliably detectable. This claim was made on the basis of a forensic finding that is standard in delayed examinations and tells us nothing about whether rape occurred.

The cremation of the victim's body at night, in the absence of her family, under police supervision, was an act of evidence destruction and familial violation that shocked international observers. It denied the family their right to final rites under their own religious tradition, it destroyed the body from which additional forensic evidence might have been obtained, and it communicated with devastating clarity that the machinery of the state in Uttar Pradesh regarded the rights of the victim's family as subordinate to the interests of suppressing the case.

The Uttar Pradesh government's response was equally revealing. Chief Minister Adityanath did not visit the family. The state government's initial communications characterized the case as a political conspiracy rather than a human rights violation. Access to the village was restricted for days, preventing journalists and civil society representatives from speaking with the family. When finally a political response emerged, it was framed around the need to maintain order rather than the need to deliver justice.

The subsequent legal proceedings have delivered partial accountability at best. Three of the four accused were acquitted of rape charges, though convicted of lesser offenses. The acquittal of the

rape charges was based on the delayed forensic evidence and the court's assessment of the consistency of the victim's dying declaration, which she had given to multiple persons in the days before her death. The conduct of the investigation and prosecution was not examined by the court as a factor bearing on the reliability of the evidence, though the investigation was massively compromised by the very forces of institutional suppression that the case had made visible.

3.2 Impunity, Political Protection, and Dominant Caste Solidarity

The Hathras case illustrates with particular clarity the mechanism of what can be called dominant caste solidarity: the organized protection of upper-caste perpetrators from legal accountability through the mobilization of caste community networks, political connections, and institutional influence. This mechanism is not unique to Hathras; it is a systematic feature of the response to caste-based violence in north Indian states with large Thakur, Brahmin, and OBC populations that have historically controlled land, police, and political offices.

The four Thakur accused had family and community ties that extended into the local political establishment. The Thakur community's political influence in Uttar Pradesh is substantial; the Thakur-Brahmin political alliance has been one of the traditional foundations of BJP and earlier Congress electoral support in the state. The police force in the region draws significantly from the same dominant caste communities. The willingness of local police to suppress the case, to delay the FIR, to cremate the body without family consent, and to make public statements challenging the rape allegation, must be understood against this background of dominant caste solidarity operating through institutional networks.

The analogy to the concept of "white solidarity" analyzed by critical race theorists in the United States context is imperfect but instructive. Critical race scholars like Patricia Hill Collins and Eduardo Bonilla-Silva have analyzed the ways in which racial solidarity operates among members of dominant racial groups to protect each other from accountability for racial violence, through the institutional mechanisms of criminal justice, through social norms of silence and complicity, and through the political mobilization of racial community interests. In the Indian context, caste solidarity performs similar functions, with the specific institutional expression reflecting the specific history of caste domination in different regions.

The political economy of dominant caste solidarity in rural north India has been analyzed by scholars including M.S.S. Pandian, Suryakant Waghmore, and Sudha Pai. Their work demonstrates that upper-caste communities maintain their social and economic dominance not only through individual acts of violence but through a complex institutional infrastructure of social boycotts, economic coercion, and political patronage that makes Dalit communities structurally vulnerable to domination and dependent on upper-caste goodwill for access to employment, land, and public services. Rape, in this context, is one instrument among many: the most extreme form of the assertion of upper-caste dominance over Dalit bodies, but continuous with the daily forms of economic and social coercion through which dominance is maintained.

3.3 The Political Response: Adityanath, BJP, and the Protection of Brahmanical Patriarchy

The response of the Uttar Pradesh government under Chief Minister Adityanath to the Hathras case illustrates the specific intersection of Hindu nationalist politics and the protection of brahmanical patriarchy. Adityanath, who is himself a Thakur from the Kshatriya upper caste, presides over a state government whose political base includes substantial upper-caste communities with whom the BJP has maintained alliance through the protection of caste interests.

The BJP's relationship with gender violence is complex and deserving of extended analysis, which it will receive in the chapter on Hindutva and gender violence. But even at the level of the specific Hathras response, several dimensions of this relationship are visible. The government's initial framing of the case as a "political conspiracy" drew on a now-standard Hindutva rhetorical strategy of treating all criticism of the government or its associated social base as political attack rather than genuine accountability demand. The suggestion, made by various BJP spokespersons and media outlets aligned with the party, that the victim's family was being "manipulated" by opposition politicians and "anti-India" forces, inverted the moral logic of the situation in a way that is characteristic of Hindutva political discourse: the victims of state and upper-caste violence become the agents of a political conspiracy, and the demand for justice becomes the manipulation.

This rhetorical strategy serves multiple functions. It delegitimizes the complainants and their advocates. It shifts attention from the substance of the violation to the politics of the response. It mobilizes the ruling party's base by framing accountability demands as threats from a political enemy. And it signals to dominant caste communities that their interests will be protected even when their members are accused of serious crimes against Dalit women. The protection of brahmanical patriarchy is not incidental to Hindutva politics; it is structurally embedded in a political project that maintains its dominance through the mobilization of caste and religious communities whose social power depends on the maintenance of the hierarchies that brahmanical patriarchy enforces.

CHAPTER FOUR: SEXUAL VIOLENCE AS A WEAPON OF POLITICAL REPRESSION

4.1 State-Perpetrated Sexual Violence: Documentation and Dimensions

The analysis of sexual violence in India cannot be limited to violence by private actors. State agents, including police officers, military personnel, and paramilitary forces, have used sexual violence as a systematic tool of political repression in specific contexts. The documentation of this pattern is extensive, credible, and alarming, and the impunity that surrounds state-perpetrated sexual violence is even more complete than the already severe impunity that characterizes violence by private actors.

The use of custodial rape, defined as rape of a person in the custody of state agents, by police to punish political dissidents, to extract confessions, to intimidate communities perceived as hostile, and to punish women whose male relatives are sought by police, is documented across India's history. The Mathura rape case, discussed in Chapter Two, was precisely a case of custodial rape: a sixteen-year-old tribal girl raped by two police officers in a police station, with the Supreme Court subsequently acquitting the officers on the basis of a construction of consent that amounted to a finding that a girl in police custody cannot be raped because her failure to resist demonstrates willingness.

In Kashmir, the documentation of sexual violence by security forces is extensive and horrifying. The Kunan Poshpora case of February 23, 1991, in which Indian Army personnel from the 4th Rajputana Rifles allegedly conducted mass rape of women in two villages in Kupwara district during a search operation, was one of the earliest and most extensively documented incidents of security force sexual violence in Kashmir. The government's response was to deny the allegations and to prevent independent investigation. The case was challenged in courts for decades. The Jammu and Kashmir State Human Rights Commission eventually found, in 2011, that the case merited investigation, but accountability has never been delivered.

The Human Rights Watch report "Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir" (2006) documented dozens of cases of sexual violence by security forces, including rape, gang rape, molestation, and sexual torture in detention. The Amnesty International report "Denied: Failures in Accountability for Human Rights Violations by Security Force Personnel in Jammu and Kashmir" (2015) documented the systematic use of AFSPA to shield security force personnel from all accountability for sexual violence. The combination of AFSPA's immunity mechanism, which requires prior government sanction for any prosecution and which no government has ever granted, and the Pakistani-and-militant-framing that causes even documented cases of security force violence to be dismissed as enemy propaganda, has created a condition of virtually absolute impunity for security force sexual violence in Kashmir.

The situation in the conflict-affected regions of the northeast is comparable. Manipur, Nagaland, and Assam have all been subjected to extended periods of AFSPA application, and all have documented patterns of security force sexual violence. The Manorama Devi case in Manipur in 2004, in which a thirty-two-year-old woman was arrested by the Assam Rifles, allegedly raped and killed in custody, and her body found with gunshot wounds and signs of sexual assault, prompted extraordinary protests including a public strip protest by older women in Imphal in which twelve mothers of Manipur displayed their naked bodies outside the Assam Rifles headquarters with banners reading "Indian Army Rape Us." The protest was an act of political theatre that captured global attention but changed nothing: the Assam Rifles personnel were never prosecuted, AFSPA was not withdrawn from Manipur, and Manorama's family continued to seek justice for years.

4.2 The "Sulli Deals" and "Bulli Bai" Affairs: Digital Sexual Violence as Political Weapon

The emergence of digital platforms as arenas for organized sexual violence against Muslim women represents a new frontier of caste-religious gender violence that the analysis of Indian human rights violations must address. The "Sulli Deals" incident of 2021 and the "Bulli Bai"

incident of January 2022 were episodes of coordinated online harassment in which the profiles of hundreds of Muslim women activists, journalists, academics, and public figures were posted on GitHub repositories framed as "auction" platforms, inviting users to "buy" Muslim women as "deals of the day" or "Bulli Bais" (the latter being a derogatory slur for Muslim women in Hindi).

The women targeted were not selected randomly. They were specifically women who had been publicly vocal on social media: journalists, activists, scholars, and civil society figures whose professional and public identity had made them visible critics of the Modi government's treatment of Muslim communities. The message of the "auction" was unmistakably sexual: the framing communicated that Muslim women's bodies were available for upper-caste Hindu male assertion, and that public professional visibility made them targets rather than protected them. The "auctions" were widely shared within Hindutva social media networks and received approving commentary from users with identifiable connections to Hindutva organizations.

Gendered and sexualised disinformation and virtual violence are used as a prominent tool to attack the autonomy of women's bodies by labelling them as sexually and socially immoral and thus further disapproving the credibility of their political opinions. The Hindutva ideology's anti-feminist leanings deploy misogynist tactics to mute women in the digital space. Sage Journals The Sulli Deals and Bulli Bai affairs were the most extreme and visible manifestations of a pattern of organized digital sexual violence against Muslim women that includes rape threats, the sharing of morphed pornographic images, coordinated pile-ons designed to drive women off social media platforms, and the systematic use of sexual language to delegitimize the political speech of Muslim women specifically.

The legal response to these incidents was revealing. Arrests were eventually made after sustained public pressure and reporting, but the investigation moved slowly and the charges filed raised questions about whether the full network of organizers would be held accountable. The platforms themselves, GitHub in particular, were criticized for allowing the repositories to exist for days before removing them despite user reports. India's Information Technology Rules of 2021 create obligations for social media platforms to address reported harmful content, but the enforcement of these obligations against content that targets Muslim women has been inconsistent.

The theoretical significance of these incidents extends beyond their specific facts. They represent the organized weaponization of digital platforms for the purpose of sexual domination of political opponents from a religious minority community. They are continuous with the tradition of rape as a political weapon, extended into the digital sphere. They demonstrate that the boundaries between private sexual violence, caste-religious assertion, and political repression are not merely blurred in India but in some contexts deliberately collapsed: sexual degradation of Muslim women is deployed as a political strategy by actors who understand that the threat of sexual violence is a powerful mechanism of social control.

The feminist theorist Andrea Dworkin, in her analysis of pornography as a practice of gender subordination, argued that the sexual objectification of women and the violence associated with it are not individual behaviors but social practices that express and reinforce power relations. Applied to the digital sexual violence against Muslim women in India, Dworkin's framework

illuminates the social function of practices like Sulli Deals: they are not merely the harassment of specific individuals but public performances of Hindutva male dominance over Muslim women's bodies, which serve to reinforce the social hierarchy that positions Muslim women at the intersection of religious and gender subordination.

4.3 The Kolkata Doctor Rape-Murder Case (2024): A National Crisis of Institutional Safety

The rape and murder of a thirty-one-year-old doctor in a government hospital in Kolkata city in August 2024 prompted widespread protests demanding justice and better security and facilities at medical campuses and hospitals. The attack cast a spotlight on how millions of Indian women remain exposed to abuse in the workplace and continue to face severe barriers to justice for sexual violence. Human Rights Watch

The Kolkata case, which became known as the "RG Kar case" after the RG Kar Medical College and Hospital where the victim was found, produced one of the largest sustained protest movements in India in recent years. Medical personnel across the country went on strike. Protests took place in cities nationwide. The case became the focal point for a broader conversation about the safety of women in public professional spaces, particularly in government institutions.

The case raised issues that go beyond the individual crime. The victim was raped and murdered in a seminar room of the hospital where she worked as a trainee doctor. The institution's initial response was characterized by attempts to minimize and suppress the incident: there were reports of delays in informing the family, inconsistencies in the account provided by hospital authorities, and questions about whether the investigation of the scene was adequately prompt and thorough. These institutional responses echoed the pattern visible in Hathras and in countless other cases: the institutional priority of protecting the reputation of the institution and its associated interests over the investigation of violence committed within its precincts.

The accused in the Kolkata case was a person with connections to the medical college's administration, raising questions about whether those connections influenced the initial response. The Calcutta High Court transferred the investigation to the Central Bureau of Investigation after concerns about the West Bengal police investigation were raised. The Supreme Court took suo motu cognizance of the case.

The broader issue illuminated by the Kolkata case is the insecurity of women in institutional workplaces. In 2024 and 2025, there has been an added spotlight on workplace insecurity for women working within the formal sector, with the rape of a young female trainee doctor at the RG Kar Hospital in Kolkata, and the publication of the Hema Committee report. Citizens for Justice and Peace The Hema Committee report, a document produced by a committee appointed by the Kerala High Court to investigate the treatment of women in the Malayalam film industry, documented extensive sexual harassment, exploitation, and abuse of women at all levels of the industry by powerful men whose positions protected them from accountability. The two cases together, one in a public health institution, one in a major cultural industry, demonstrated that the insecurity of women in institutional spaces is not a problem of specific bad actors but a systemic condition produced by the absence of genuine accountability mechanisms.

The POSH (Prevention of Sexual Harassment at Workplace) Act of 2013, enacted following the Supreme Court's Vishaka guidelines, was supposed to provide that accountability through Internal Complaints Committees and Local Complaints Committees in every workplace. But the implementation of the POSH Act has been deeply inadequate, particularly in the informal sector where the vast majority of working women in India are employed, and even in many formal sector workplaces where the existence of Internal Complaints Committees does not guarantee that they function effectively, independently, or without institutional pressure to suppress complaints against senior officials.

CHAPTER FIVE: HINDUTVA IDEOLOGY AND THE NORMALIZATION OF GENDER VIOLENCE

5.1 The Gender Politics of Hindu Nationalism

The relationship between Hindu nationalism, the political ideology of the RSS-BJP combine, and gender violence is a subject that demands careful and specific analysis, because it involves several distinct but interrelated dimensions. It is not the case that Hindu nationalism is simply pro-violence against women in a straightforward way. The BJP government has presented itself, through campaigns like "Beti Bachao, Beti Padhao" (Save the Daughter, Educate the Daughter), as a champion of women's welfare. The tension between this self-presentation and the actual record requires explanation.

The gender politics of Hindu nationalism can be understood through the framework provided by the concept of "protectionist patriarchy": a form of gender ideology that claims to protect and honor women while simultaneously insisting on their subordination within a strict gender hierarchy. In this framework, women are valued as mothers, daughters, and wives of Hindu men, as bearers of Hindu cultural and biological continuity, and as symbols of Hindu civilization's dignity. Their protection is framed as a matter of Hindu honor and national security. But the protection offered is conditional on conformity to specific gender norms: the woman who steps outside these norms, who exercises sexual autonomy, who marries across religious lines, who participates in political activism, or who criticizes the Hindu nationalist project, forfeits the protection of the ideology's honor framework and becomes instead a subject of discipline.

The concept of "Love Jihad" is the most explicit manifestation of this logic. The "Love Jihad" narrative, which holds that Muslim men are engaged in an organized conspiracy to seduce Hindu women into marriage as a means of converting them and producing Muslim children, serves multiple political functions. It mobilizes Hindu nationalist sentiment around the theme of sexual threat. It pathologizes the autonomy of Hindu women who choose to enter relationships with Muslim men. And it provides an ideological framework that has been translated into law through the anti-conversion legislation enacted in multiple BJP-governed states, which specifically targets conversions associated with marriage.

The gender implications of the Love Jihad narrative are profound. It positions Hindu women not as rights-bearing agents with the autonomy to choose their own partners, but as passive objects

of male competition between Hindu and Muslim men, whose choices, if they deviate from Hindu endogamy, are by definition the product of manipulation and coercion. This framing denies Hindu women's agency while presenting the denial as protection. The criminalization of interfaith marriages under anti-conversion laws represents the translation of this patriarchal logic into coercive law.

5.2 The "Ghar Wapsi" Phenomenon and Its Gendered Dimensions

The "Ghar Wapsi" (Return to the Home) program, organized by Hindu nationalist organizations including the Vishwa Hindu Parishad and its affiliates, which involves the reconversion of Christians and Muslims to Hinduism, has specific gender dimensions that are important for the analysis of human rights. Reports from multiple states, particularly those with significant Adivasi Christian populations like Chhattisgarh, Jharkhand, and Odisha, document cases in which Adivasi Christian women have been subjected to coercion, social boycott, and physical violence in the context of Ghar Wapsi campaigns.

The intersection of the Ghar Wapsi phenomenon with gender is visible in several ways. The framing of Christian conversion as an attack on Hindu culture and identity draws specifically on the image of Hindu women being "lured" from their communities by Christian missionaries and Christian men, echoing the Love Jihad narrative in a different religious context. The violence against Adivasi Christians associated with Ghar Wapsi campaigns frequently targets women as the symbolic bearers of community religious identity. And the legal framework of anti-conversion laws, which criminalizes conversion motivated by allurement, fraud, or coercion, is applied with striking asymmetry: the organized social pressure, economic coercion, and in some cases physical violence associated with Ghar Wapsi campaigns is not treated by state authorities as coercion under the anti-conversion laws, which are applied instead to the activities of Christian missionaries.

5.3 Communal Violence and the Instrumentalization of Rape

The use of rape as an instrument of communal violence against Muslims and Christians is one of the most disturbing dimensions of the intersection of Hindutva ideology and sexual violence. The theoretical framework of rape as a weapon in communal and ethnic conflict has been developed extensively by scholars working in the context of the Bosnian War and the Rwandan Genocide, where rape was used systematically as a tool of ethnic cleansing, community destruction, and the assertion of victors' control over the reproductive future of the defeated community.

The application of this framework to India is controversial because it requires acknowledging that organized sexual violence in communal riots is not merely individual criminal behavior but a political strategy. But the evidence from major episodes of communal violence in India, from the Partition massacres of 1947 through the anti-Sikh pogrom of 1984 through the Gujarat genocide of 2002, is consistent with this analysis.

The Gujarat genocide of 2002, which followed the Godhra train burning in which 59 people, most of them Hindu pilgrims, died, involved extensive organized violence against Muslim communities in which rape and sexual mutilation were systematic. The Best Bakery case, the

Bilkis Bano case, and dozens of other documented incidents demonstrate that sexual violence against Muslim women during the Gujarat riots was not random but targeted and organized: perpetrators knew which houses were Muslim, had specific information about the occupants, and acted with the confidence of people who expected legal immunity.

The Bilkis Bano case is particularly significant for what it reveals about the political protection of communal sexual violence. Bilkis Bano, who was five months pregnant during the Gujarat riots, was gang-raped by eleven men as her family was attacked; fourteen members of her family were killed. She showed extraordinary courage in pursuing the case through the courts over more than fifteen years, eventually securing the conviction of eleven perpetrators in 2017. But in August 2022, the BJP government of Gujarat, using a remission power that the Supreme Court subsequently found was exercised without jurisdiction, released all eleven convicted rapists from prison on the occasion of India's Independence Day. The release was applauded by BJP leaders, some of whom greeted the released convicts with garlands. The message sent by this release to Muslim women, to rape survivors generally, and to the broader public about the state's attitude to communal sexual violence was devastating.

People condemning the government decision to free from prison eleven convicts of a 2002 gang rape of a Muslim woman in Gujarat gathered for a protest in Kolkata. The Diplomat The subsequent Supreme Court ruling in November 2023 that the Gujarat government's remission order was unconstitutional and ordering the eleven convicted rapists to surrender marked a partial judicial correction, but the episode had already communicated its political lesson.

The theoretical framework developed by scholars of transitional justice including Fionnuala Ni Aolain and Caron Gentry is relevant here: in conflict and post-conflict contexts, the protection of perpetrators of sexual violence by the political authorities associated with the perpetrators' community signals that the sexual violence was politically endorsed and sends a powerful message about the relative value of the violated community's women. The release of the Bilkis Bano convicts, welcomed by BJP officials, was precisely this kind of signal.

5.4 The "Two-Child Policy" Discourse and Demographic Anxiety

The Hindu nationalist preoccupation with Muslim population growth, expressed in the repeated, factually false claim that Muslims are outbreeding Hindus and will eventually become the majority population, has specific implications for the analysis of gender rights. This discourse of demographic anxiety, which has been promoted at various times by BJP leaders including Union Home Minister Amit Shah, UP Chief Minister Adityanath, and numerous other officials, serves to frame Muslim women's reproductive choices as threats to the Hindu nation.

The policy implications of this framing are visible in proposals for population control measures that would disproportionately penalize Muslim and Dalit families with more than two children by disqualifying them from government programs and elected positions. The Uttar Pradesh Population (Control, Stabilization and Welfare) Bill of 2021, proposed by the Adityanath government, included provisions that would disqualify persons with more than two children from government employment and from participation in local governance structures. While the bill has not been enacted, its proposal signals the direction of policy intent.

The feminist critique of population control policies in their Indian context is well-developed, drawing on the analysis of scholars including Mohan Rao and Malini Bhattacharya who have documented the systematic targeting of poor, Dalit, and Muslim women by aggressive sterilization campaigns in previous decades. The Emergency period saw compulsory sterilization campaigns in which lower-caste and Muslim men were the primary targets of forced sterilization. More recent population control discourse, framed around the two-child policy, updates this targeting with a specifically communal dimension: the management of Muslim reproductive behavior becomes a national security objective, framing Muslim women's bodies as the site of a demographic threat to be controlled.

CHAPTER SIX: MANUAL SCAVENGING AND THE EMBODIED HUMILIATION OF DALIT WOMEN

6.1 The Crime of Manual Scavenging: Law, Reality, and the Limits of Prohibition

Manual scavenging, the practice of manually cleaning, carrying, or disposing of human excreta from dry latrines, open drains, and sewers, is one of the most visceral manifestations of the intersection of caste and gender oppression in contemporary India. It is a practice assigned almost exclusively to specific Dalit sub-castes, whose members are compelled by economic necessity and social coercion to perform the most degrading physical labor imaginable, labor that has been prohibited by law since 1993 and whose prohibition has been systematically ignored.

The prohibition on manual scavenging is contained in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993, which was replaced by the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act of 2013. The 2013 Act strengthened the prohibition, created a survey obligation to identify manual scavengers, established rehabilitation programs, and imposed criminal penalties for the employment of manual scavengers. The Supreme Court, in Safai Karamchari Andolan v. Union of India (2014), held that the practice of manual scavenging violates the fundamental rights of those compelled to perform it, constituting a violation of Article 21 (right to life and dignity) and Article 17 (prohibition of untouchability).

Despite all of this, manual scavenging continues in 2026. Almost 98 percent of those forced into manual scavenging are women. Citizens for Justice and Peace The National Commission for Safai Karamcharis (NCSK) continues to record deaths of workers cleaning sewers and septic tanks without adequate protective equipment. The government's own survey processes have been deeply inadequate, identifying far fewer manual scavengers than independent surveys by civil society organizations have found. The rehabilitation programs established by the 2013 Act are chronically underfunded and ineffective. And the criminal enforcement of the prohibition is virtually nonexistent: prosecutions of employers for employing manual scavengers, though possible under the Act, have been extraordinarily rare.

The gender dimension of manual scavenging is as important as its caste dimension. Women, specifically Dalit women from specific sub-castes including Valmiki, Bhangi, and Mehtar

communities, are the primary performers of the most degrading form of manual scavenging: the cleaning of dry latrines, open defecation sites, and residential pits by hand. This work assignment is not the result of individual choice but of a caste-based division of labor that has operated for centuries and that is maintained through social coercion, economic desperation, and the complete absence of alternative employment opportunities for women from these communities.

The social consequences of performing this work are an additional dimension of the violation. Women who perform manual scavenging are stigmatized even within their own communities, treated as the most polluted of the already "polluted" Dalit communities. Their physical work involves daily exposure to pathogens, chemical waste, and conditions that produce chronic illness. The psychological impact of performing, day after day, labor that the broader society treats as the expression of one's inherent pollution and social worthlessness is a form of violence that has no name in legal doctrine but is recognized in the scholarship of structural violence as one of its most severe forms.

6.2 Devadasi System: The Institutionalized Prostitution of Dalit Girls

The devadasi system, which involves the dedication of girls, almost always from Dalit communities, to Hindu temples through a ceremony that consecrates them as servants of the deity but effectively initiates them into a life of sexual service to temple priests, landlords, and upper-caste patrons, is one of the oldest and most deeply entrenched forms of institutionalized sexual exploitation in India. It is prohibited by law in multiple states. It continues in practice in significant regions of Karnataka, Andhra Pradesh, Telangana, and Maharashtra.

The families who dedicate daughters to the devadasi system are almost invariably from the poorest Dalit communities, specifically the Madiga, Chamar, and Hooleya subcastes whose historic occupational roles placed them at the bottom of the economic hierarchy. The dedication ceremony is typically performed when the girl is between five and fifteen years of age, at which point she becomes the sexual property of the local priest or patron and is thereafter unable to marry, because she is already "married to the god." The economic dimension is central: the family receives payment from the patron who initiates the girl into sexual service, and the girl's subsequent earnings from sexual service supplement the family's income.

The legal framework governing the devadasi system illustrates the limitations of legislative prohibition without social transformation. The Karnataka Devadasi (Prohibition of Dedication) Act of 1982 and the Andhra Pradesh Devadasi (Prohibition of Dedication) Act of 1988 prohibit the dedication ceremony and impose criminal penalties. But enforcement has been minimal, partly because the communities involved exercise their caste-religious practices in conditions of poverty and relative isolation from state enforcement machinery, and partly because the economic desperation that drives dedication ceremonies is not addressed by the prohibition alone.

CHAPTER SEVEN: THE POLITICS OF MARITAL RAPE AND DOMESTIC VIOLENCE

7.1 Domestic Violence as a Systemic Problem

The Protection of Women from Domestic Violence Act (PWDVA) of 2005 represents a significant advance in the legal framework for addressing domestic violence. The Act's definition of domestic violence is comprehensive, including physical, sexual, verbal, emotional, and economic abuse. It provides for a range of civil remedies including protection orders, residence orders, custody orders, and monetary compensation. It mandates the appointment of Protection Officers to assist victims and establishes Support Persons from civil society organizations to facilitate access to the system. It recognizes the right of a woman to remain in her shared household, including the marital home, regardless of whether she has a legal ownership interest.

These are genuine legislative achievements. But the implementation record is deeply inadequate in ways that track the systemic failures analyzed throughout this textbook. Protection Officers have not been appointed in many jurisdictions. Where appointed, they are frequently undertrained, underfunded, and unable to perform the functions assigned to them. The courts with jurisdiction under the PWDVA are the same courts whose caseloads are already overwhelming, and PWDVA applications frequently wait years for disposal. The shelter homes established under the Act vary widely in quality, with some considered overcrowded and inadequate. GOV.UK

The intersection of domestic violence with caste and religion adds further dimensions. Dalit women in domestic violence situations face the additional barrier that the police they must approach for assistance are often from the same dominant caste as their abusers, and the community networks that would otherwise support them may be captured by the interests of the abuser's family. Muslim women face a dual vulnerability: they are subject to the PWDVA's protections, but Muslim personal law frameworks, particularly around maintenance, divorce, and child custody, create uncertainties about the interaction between PWDVA remedies and personal law provisions that courts have not consistently resolved in ways favorable to the woman.

7.2 The Marital Rape Gap: Sexual Violence in Marriage

The marital rape exception, discussed in Chapter Two in the context of criminal law reform, creates a specific and profound gap in the protection of married women from sexual violence. This gap is not merely technical; it is a substantial category of harm affecting a significant number of women. Studies of gender-based violence in India, including the National Family Health Survey and independent research by civil society organizations, consistently find that a significant proportion of sexual violence against women is perpetrated by their husbands.

The argument most commonly made in favor of retaining the marital rape exception, beyond the ideological arguments about the nature of marriage discussed earlier, is that criminalization would be difficult to implement in practice because of evidentiary challenges and the potential for misuse. This argument deserves engagement but ultimately fails. The evidentiary challenges associated with marital rape are not categorically different from the evidentiary challenges associated with other forms of rape, where a "he said, she said" dynamic is equally present in many cases. The potential for misuse, while real, is equally applicable to all rape charges and has never been accepted as a ground for not criminalizing rape generally. The retention of the marital

rape exception on these grounds is a decision to treat the evidentiary complexity and potential misuse risk as more significant than the right of married women not to be raped, a decision that reflects the prioritization of the marital institution over the woman's bodily integrity.

The philosophical tradition of consent theory, which has been central to liberal political philosophy since John Locke, demands that consent be specific, informed, revocable, and contemporaneous. A doctrine of implied consent derived from the marriage contract fails all four requirements. The consent was not specific to any particular sexual act, it was not informed by a clear understanding that it operated as a permanent and irrevocable surrender of sexual autonomy, it cannot be revoked because the legal fiction of consent is attached to the status of marriage rather than to any particular act, and it is not contemporaneous with the act because it derives from the act of marriage rather than from any affirmative agreement to the specific sexual act in question.

The international human rights dimension is equally clear. As noted in Chapter Two, the CEDAW Committee's General Recommendation 35 specifically requires the criminalization of marital rape. The Istanbul Convention, the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence, which is the most comprehensive international instrument on gender-based violence, explicitly requires criminalization of non-consensual sexual acts within marriage. India has not ratified the Istanbul Convention, but its provisions represent the international consensus on what effective protection of women from sexual violence requires.

CHAPTER EIGHT: THE NIRBHAYA CASE, ITS AFTERMATH, AND THE LIMITS OF LEGAL REFORM

8.1 The Nirbhaya Protests as a Constitutional Moment

The mass protests that erupted across India following the gang rape and murder of a twenty-three-year-old physiotherapy student in New Delhi on December 16, 2012, were the closest India has come in the post-independence period to a feminist constitutional moment: a period of intense popular mobilization around the demand for fundamental change in the legal and institutional treatment of sexual violence against women.

The protests were remarkable for their scale, their spontaneity, their geographic spread, and their composition. They were led and largely composed of young urban people, many of them women, who articulated demands for safe public spaces, for legal reform, for police accountability, and for cultural change in the attitudes toward women that normalized sexual violence. The protests confronted the state with water cannons and baton charges, revealing the government's instinct toward repression even in the face of an essentially feminist demand for rights.

The protests produced a legislative response: the Criminal Law Amendment Act of 2013, analyzed in Chapter Two. But as noted there, the response fell significantly short of the protesters' demands, excluding marital rape criminalization, failing to adequately address

intersectional violence, and not introducing the structural changes in police culture and forensic infrastructure necessary to make the legal reforms meaningful. The limits of the Nirbhaya legislative response illustrate a broader pattern in Indian rights politics: the state responds to dramatic public pressure with formal legislative gestures that satisfy the immediate political demand without addressing the underlying structural problem.

The Justice JS Verma Committee's report, produced in less than a month by a three-member committee led by former Chief Justice JS Verma, is a remarkable document of feminist legal analysis. It recommended the criminalization of marital rape, the recognition of sexual violence by security forces as a distinct offense, the removal of AFSPA as a bar to prosecution for sexual violence by security forces, the strengthening of victim support services, and a comprehensive approach to the training of police and judiciary in gender-sensitive practice. Most of these recommendations were not incorporated in the resulting legislation, but the report remains an authoritative statement of what comprehensive reform would require.

8.2 The Fast-Track Courts: Institutional Reform and Its Discontents

The establishment of fast-track courts specifically for cases of sexual violence, mandated by the 2013 reforms and expanded subsequently, is the most significant institutional response to the demand for more effective justice delivery in rape cases. As of 2025, India operates several hundred fast-track special courts designated for rape cases, including many specifically for cases involving crimes against children.

The theoretical justification for fast-track courts rests on the documented relationship between delay and justice: delay in criminal proceedings is not merely inconvenient but harmful, particularly in cases of sexual violence where delay increases the risk of witness intimidation, evidence degradation, survivor re-traumatization, and secondary victimization through the prolonged legal process. The empirical evidence from India suggests that the fast-track courts have had some positive effect on the disposition rate of designated cases, though the overall backlog in sexual violence cases remains enormous.

But fast-track courts are not a solution to the structural problems that produce injustice in sexual violence cases. A court that processes cases quickly but applies a jurisprudence infected with gender bias, that relies on investigations conducted by a police force with entrenched institutional prejudices, that operates in a legal culture that undervalues the testimony of Dalit and Muslim women, will produce injustice more efficiently rather than more justice. The quality of the justice delivered, not merely the speed of the proceeding, is what matters for rights protection.

The feminist critique of fast-track courts makes a further point that deserves engagement: the insistence on speed in sexual violence cases may serve institutional priorities around case disposal that do not align with the interests of survivors. The survivor's interest is in thorough investigation, careful prosecution, sensitive court procedures, and fair assessment of evidence. All of these take time. A system that prioritizes speed may sacrifice thoroughness, may shortchange the development of the prosecution case, and may fail to provide the survivor with the space and support she needs to give her testimony effectively.

8.3 The Conviction Rate Problem

The conviction rate in rape cases in India is approximately 27 percent according to official NCRB data, meaning that nearly three-quarters of registered rape cases that result in trial end in acquittal. This figure is itself misleading because it does not account for the vast number of cases that are registered but do not result in trial, either because the investigation is inadequate, the case is settled out of court under pressure, the charge sheet is not filed, or the case is simply pending at investigation stage for years. When one accounts for the full funnel from incident to conviction, the probability that a rape incident results in the conviction of the perpetrator is a tiny fraction of even the 27 percent official conviction rate.

The specific conviction rate for rape under the SC/ST Prevention of Atrocities Act is even lower. The conviction rate of rapes against Dalit women is at a mere 2 percent as opposed to the national average of 25 percent. Citizens for Justice and Peace This figure is not a statistical accident. It is the product of every systemic failure analyzed in this Part: the reluctance to register FIRs in atrocity cases, the manipulation of evidence by police, the pressure on victims to drop cases or accept settlements, the inadequate preparation of prosecution witnesses, the judicial undervaluation of Dalit testimony, and the influence of dominant caste solidarity in both the executive and judicial branches.

The criminological literature on conviction rates in sexual violence cases identifies three categories of factors that affect case outcomes: case characteristics (the strength of the evidence, the relationship between perpetrator and victim, the nature of the assault), victim characteristics (including vulnerability, social status, and the consistency of the victim's account), and system factors (including the thoroughness of the investigation, the quality of the prosecution, the attitudes of the judge, and the availability of victim support services). In India, the intersection of all three categories systematically disadvantages Dalit and Muslim rape survivors.

CHAPTER NINE: MISSING WOMEN, CHILD MARRIAGE, AND THE GENDERED POPULATION CRISIS

9.1 The Mystery of Missing Women

Amartya Sen's concept of "missing women," introduced in his 1990 essay in the New York Review of Books and subsequently developed in multiple publications, identifies one of the most striking demographic manifestations of gender inequality in India: the systematic deficit of women relative to what would be expected based on biological sex ratios at birth and normal demographic patterns. Sen's calculation, updated by subsequent researchers including Siwan Anderson and Debraj Ray, suggests that India has tens of millions of "missing women": women who are alive but would not have existed, or who died prematurely, as a result of systematic discrimination in the allocation of food, healthcare, and other vital resources.

The most visible demographic manifestation of this discrimination is the skewed sex ratio at birth in India, which has been persistently below the biological norm of approximately 105 boys

per 100 girls. The 2011 census found a sex ratio at birth of 111 boys per 100 girls, reflecting the systematic practice of sex-selective abortion: the abortion of female fetuses identified through prenatal sex determination tests. The Preconception and Prenatal Diagnostic Techniques Act (PCPNDT) of 1994, which prohibits the use of prenatal sex determination for the purpose of sex selection, has not been effectively enforced, and the underlying social preference for sons that drives sex-selective abortion has not been addressed through educational or cultural change programs of adequate depth or breadth.

The "missing women" phenomenon is not uniform across India. It is concentrated in specific regions (particularly north India and parts of northwest India), specific religious communities (though it affects both Hindus and Sikhs more severely than Muslims or Christians in many regions), and specific socioeconomic classes (it is found across income levels but is particularly pronounced in communities with strong dowry traditions, where daughters represent an economic burden). This geographic and demographic specificity provides important clues about the causal mechanisms: the missing women problem is most severe where patrilineal property inheritance, dowry systems, and specific forms of masculine cultural identity combine to construct daughters as financial liabilities.

9.2 Child Marriage: Persistence, Harm, and the Legal Framework

Child marriage, defined as the formal or informal union of a person below the age of eighteen, remains a significant social reality in India despite legal prohibition. The Prohibition of Child Marriage Act of 2006 prohibits child marriage and provides for the voidability of such marriages by the parties. The Prohibition of Child Marriage (Amendment) Bill, introduced in 2021 and still being considered, would raise the minimum marriage age for women from eighteen to twenty-one, bringing it into alignment with the minimum age for men.

The persistence of child marriage at significant scale, particularly in states like Rajasthan, Bihar, West Bengal, Jharkhand, and parts of Uttar Pradesh and Madhya Pradesh, is a function of the same intersecting forces that produce other forms of gender inequality: economic pressure on families to minimize the cost of daughters, patrilineal property structures that treat daughters as temporary members of the natal family, social norms that value early marriage as a protection against the stigma of sexual violation, and the limited educational and economic opportunities available to girls in many regions that remove the individual incentives for delaying marriage.

The human rights consequences of child marriage are severe and well-documented. Child brides face dramatically elevated risks of pregnancy and childbirth complications, which remain among the leading causes of death for girls aged fifteen to nineteen globally. They are removed from educational institutions at the age of marriage, foreclosing future economic opportunity. They enter into sexual relationships before they are physically and psychologically mature. They are subordinated to their husbands' families in conditions where their status is even more precarious than that of adult women, because they have even less social capital, family support, and legal knowledge to draw on.

The intersection of child marriage with caste is important. Child marriage rates are higher in OBC and Scheduled Caste communities than in upper castes in many regions, reflecting the

economic pressures and social conventions that affect these communities disproportionately. But child marriage also occurs in upper-caste communities where different social logics apply: the preservation of caste purity through the early marriage of daughters before they can be exposed to the "risk" of intercaste relationships, and the assertion of family honor through demonstration of control over female sexuality.

CHAPTER TEN: ADIVASI WOMEN AND THE TRIPLE BURDEN OF MARGINALIZATION

10.1 The Specific Vulnerability of Adivasi Women

Adivasi women, members of the Scheduled Tribes who constitute approximately eight percent of India's population and whose communities are concentrated in the forested central, northeastern, and western regions of the country, face a distinctive configuration of human rights vulnerabilities that requires analysis separate from, though continuous with, the analysis of Dalit women's situation.

Adivasi women's vulnerability is structured by three overlapping systems of disadvantage. The first is the general system of gender hierarchy that subordinates women throughout Indian society. The second is the specific disadvantage of tribal identity: the historical marginalization of Adivasi communities through colonial and post-colonial processes of dispossession, displacement, and cultural assimilation. The third, which is specific to Adivasi communities in conflict-affected regions, is the security force presence that accompanies counterinsurgency operations and that creates specific risks of sexual violence in the absence of accountability mechanisms.

The displacement of Adivasi communities from their ancestral lands for development projects, a process that has been documented extensively across India since the dam construction of the Nehruvian era, is both a human rights violation in itself and a source of specific vulnerabilities for Adivasi women. Displacement from the land-based economies in which Adivasi women had significant agency and contribution removes them from the social and economic contexts in which their status was defined and in which community norms provided some protection against violence. Displacement into urban or peri-urban settings, or into rehabilitation colonies without adequate land and social infrastructure, exposes Adivasi women to forms of exploitation, including sexual exploitation, for which their social networks and cultural frameworks do not prepare them.

The Forest Rights Act of 2006, which was supposed to recognize the rights of Adivasi communities to the forests they have inhabited and managed for generations, has been inadequately implemented in ways that disproportionately harm women. The recognition of Community Forest Rights requires collective decision-making processes within communities. In many Adivasi communities, the governance structures through which such decisions are made are male-dominated, and women's contributions to forest management, their knowledge of forest

resources, and their interests in the outcome of rights recognition processes are not adequately reflected.

10.2 Security Forces and Adivasi Women

The counterinsurgency operations conducted by central security forces and state police in regions affected by Maoist/Naxalite insurgency, and in earlier periods by separatist insurgencies in the northeast, have produced documented patterns of violence against Adivasi women. Rape, molestation, arbitrary detention, and the destruction of property in the course of security operations are documented in reports by the People's Union for Civil Liberties, the Human Rights Forum (Andhra Pradesh/Telangana), the Asian Human Rights Commission, and international organizations including Human Rights Watch.

The Supreme Court's landmark judgment in Nandini Sundar v. State of Chhattisgarh (2011) addressed the violation of Adivasi rights in the context of the Salwa Judum: a government-sponsored vigilante militia in Chhattisgarh whose members were drawn from Adivasi communities and armed by the state to conduct counterinsurgency operations against Maoist groups. The Court found that the Salwa Judum had committed widespread atrocities against Adivasi villages, including burning homes, killing villagers, and sexual violence, and ordered its dissolution and the disarming of its members. But the accountability gap remained: despite the Court's findings, no prosecutions of Salwa Judum members for violence against Adivasi communities resulted in meaningful convictions.

The counterinsurgency operations in Bastar district of Chhattisgarh, conducted under Operation Green Hunt and its successors, have been characterized by the sustained displacement of Adivasi communities, the destruction of villages, and the use of rape as a tool of community intimidation documented in testimony collected by multiple human rights organizations. The Jagdalpur Legal Aid Group, which provided legal assistance to Adivasi people affected by security operations in Bastar, had its offices raided and its members subjected to UAPA prosecution, illustrating the state's response to documentation of security force violations: not investigation and accountability but suppression of the documentation.

CHAPTER ELEVEN: THE CEDAW DIMENSION - INDIA'S INTERNATIONAL OBLIGATIONS AND THEIR SYSTEMATIC BREACH

11.1 CEDAW as a Comprehensive Framework

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by India in 1993, is the most comprehensive international instrument on women's rights and is often described as the international bill of rights for women. India's ratification of CEDAW, subject to certain reservations, creates legally binding obligations across a comprehensive range of areas including education, employment, healthcare, political participation, family law, and protection from violence.

The CEDAW Committee, which monitors state party compliance through the review of periodic reports and through individual communications procedures, has developed an extensive body of jurisprudence on the specific obligations that CEDAW creates. General Recommendation 19 (1992) and its successor General Recommendation 35 (2017) establish that gender-based violence constitutes discrimination in violation of CEDAW and that states have comprehensive due diligence obligations to prevent, investigate, prosecute, and punish gender-based violence. General Recommendation 36 (2017) develops the right to education for women and girls. General Recommendation 37 (2018) addresses gender-related dimensions of disaster risk reduction. General Recommendation 38 (2020) addresses trafficking in women and girls in the context of global migration.

The CEDAW Committee reviewed India's combined sixth and seventh periodic report in 2014, producing Concluding Observations that identified numerous areas of concern and recommendations for remedial action. The Committee expressed concern about, among other things: the persistence of gender-based violence and the inadequacy of the state's preventive and protective responses; the continuation of child marriage and dowry practices despite legal prohibition; the inadequate implementation of the PWDVA; the persistence of discriminatory personal laws affecting women in family matters; the marginalization of Dalit and Adivasi women within general women's rights programs; and the inadequate implementation of the POSH Act.

The Concluding Observations also identified specific concerns about the situation of Dalit and minority women that directly track the analysis in this Part. The Committee expressed concern about "multiple and intersecting forms of discrimination" faced by women from marginalized groups including Scheduled Castes, Scheduled Tribes, and religious minorities, and called on India to adopt specific measures addressing the intersectional discrimination these women face.

India is overdue for its next CEDAW review. The pattern of delay in submitting periodic reports, and the inadequacy of implementation of Committee recommendations between reviews, represents a broader pattern of formal compliance with the treaty system, continuing to be a party, continuing to submit reports after delay, combined with substantive non-compliance with the obligations the treaty imposes.

11.2 The ICCPR Dimension: Civil and Political Rights for Women

The International Covenant on Civil and Political Rights, to which India is a party, creates obligations regarding women's rights through several provisions. Article 3 requires states to ensure equal rights of men and women to the enjoyment of all civil and political rights in the Covenant. Article 7 prohibits torture and cruel, inhuman or degrading treatment, which encompasses sexual violence in detention and forced submission to degrading practices including the two-finger test. Article 9 guarantees liberty and security of person, violated when women are arbitrarily detained or when the state fails to protect women from private violence.

The Human Rights Committee's General Comment 28 (2000) on the equality of rights between men and women provides authoritative interpretive guidance on the ICCPR's gender equality requirements. It specifies that states must report on how their laws and practice affect women

differently from men, must address all forms of gender-based violence, must ensure equal access for women to the justice system, and must eliminate discriminatory provisions in family law, criminal law, and other areas.

The Human Rights Committee's July 2024 Concluding Observations on India's fifth periodic report represent the most recent authoritative international assessment of India's compliance with its ICCPR gender equality obligations. The Committee expressed concern about the persistence of gender-based violence and inadequate implementation of laws to address it, about the marital rape exception, about the situation of Dalit and minority women facing intersectional discrimination, and about the inadequacy of disaggregated data on the situation of women from different communities.

11.3 The Jurisprudence of Due Diligence and Its Application to India

The concept of due diligence, as it applies to states' obligations with respect to gender-based violence, has been progressively developed by international human rights bodies into a framework of considerable specificity. The UN Special Rapporteur on Violence against Women, particularly through the reports of successive mandate holders including Radhika Coomaraswamy, Yakin Erturk, Rashida Manjoo, Dubravka Simonovic, and Reem Alsalem, has developed the due diligence framework through engagement with specific country situations and through thematic reports.

The due diligence framework, in its current form, requires states to: prevent gender-based violence through legislative, educational, and cultural measures; protect women at risk from violence through police and legal responses; prosecute perpetrators effectively; punish them with appropriate penalties; and provide reparations to victims. The framework also requires monitoring, coordination across government departments, and accountability mechanisms including data collection, oversight bodies, and transparency obligations.

Applying the due diligence framework to India across the dimensions analyzed in this Part produces a comprehensive finding of systematic non-compliance. India has failed the prevention obligation through the retention of laws that legitimate gender inequality (the marital rape exception), the promotion of cultural values that normalize female subordination (Hindutva gender ideology), and the inadequate investment in education that would transform gender norms at scale. It has failed the protection obligation through a police culture that systematically undervalues complaints by Dalit, Muslim, and Adivasi women. It has failed the prosecution obligation through inadequate investigation, insufficient forensic capacity, and a criminal justice culture that produces the abysmal conviction rates documented earlier. It has failed the punishment obligation through the political protection of perpetrators, the release of convicted rapists, and the AFSPA immunity that protects security force personnel who commit sexual violence. And it has failed the reparation obligation by providing inadequate victim compensation, insufficient support services, and no systematic program of accountability to survivors of systematic rights violations.

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CHAPTER TWELVE: THE PHILOSOPHICAL DEMANDS OF REPRODUCTIVE RIGHTS

12.1 Reproductive Rights as Constitutional Rights

The Indian Supreme Court, in X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi (2022), declared reproductive autonomy a fundamental right under Article 21 and held that it extends to all women, including unmarried women, who seek termination of pregnancy under the Medical Termination of Pregnancy Act. The judgment, authored by Justice DY Chandrachud, represented a significant doctrinal advance, reasoning from the right to bodily autonomy established in the Puttaswamy privacy judgment through to the specific context of reproductive choice.

The jurisprudential foundations of reproductive rights in India have been contested across several decades. The Medical Termination of Pregnancy Act of 1971, which permitted abortion under specified circumstances but framed the decision as primarily medical rather than rights-based, created a framework in which access to legal abortion depended on medical certification rather than on the woman's right to choose. The 2021 amendment to the MTP Act extended the permissible gestational period for termination and expanded the categories of persons who could seek termination without the consent of their partners, including unmarried women, and created specific provisions for survivors of sexual violence. The 2022 Supreme Court judgment built on these legislative changes to articulate a rights-based framework grounding the availability of safe, legal abortion in the woman's constitutional right to reproductive autonomy.

The philosophical tradition underlying reproductive rights connects to the capability approach of Amartya Sen and Martha Nussbaum, who include bodily integrity and the ability to control one's reproductive functions among the central human capabilities whose protection is a requirement of a just society. Martha Nussbaum's list of central capabilities, developed in "Women and Human Development" (2000) and "Creating Capabilities" (2011), specifically identifies "being able to have good health, including reproductive health" and "being able to move freely from place to place; having one's bodily boundaries treated as sovereign; that is, being able to be secure against assault, including sexual assault and domestic violence" as fundamental capabilities whose absence constitutes a failure of social justice.

The application of this framework to India reveals a profound gap between the doctrinal advances in reproductive rights jurisprudence and the material reality for most Indian women. Access to safe, legal abortion services requires proximity to a certified medical facility with trained personnel, the ability to pay for the service or access it through public provision, freedom from social coercion by husband or family, and knowledge of one's legal rights. For rural Dalit and Adivasi women, for women in regions with inadequate medical infrastructure, for women from communities where the husband's or family's consent is socially required regardless of its legal status, all of these conditions are frequently absent. The legal right exists; the material capability does not.

The specific situation of rape survivors seeking abortions illustrates the gap with particular clarity. Survivors of rape, including Dalit women raped by upper-caste men, have the right under

the amended MTP Act to seek termination of pregnancies resulting from rape. But exercising this right requires the survivor to prove that she was raped, to navigate the medical system, to overcome the time constraints imposed by gestational limits, and to do all of this while simultaneously pursuing a criminal case whose process is itself traumatizing and whose outcome is uncertain. The interaction of the criminal justice process with the medical process creates barriers that many survivors cannot overcome.

12.2 Feminist Political Philosophy and the Ethics of Care

Carol Gilligan's ethics of care, introduced in "In a Different Voice" (1982), provides a philosophical framework for understanding what is missing from the rights-based approach to gender equality when rights are understood purely in terms of abstract individual entitlements. Gilligan's argument is that moral reasoning occurs in two distinct registers: the "justice" register, which focuses on rights, rules, and principles, and the "care" register, which focuses on relationships, responsibilities, and context-sensitive responses to particular needs. Mainstream rights theory, she argues, has privileged the justice register in ways that have obscured the moral importance of care and the specific vulnerabilities that relational contexts create.

Applied to the analysis of gender violence in India, the ethics of care perspective draws attention to dimensions that rights-based analysis tends to miss. The survivor of sexual violence does not merely need justice in the sense of prosecution and punishment of her perpetrator; she needs care: medical attention, psychological support, housing security, economic support, community protection, and ongoing relationship with people who recognize her suffering and respond to it with sustained attention. The absence of this care dimension from the Indian state's response to sexual violence is one of the most significant failures of the existing framework. The support services available to survivors, the shelter homes, the one-stop crisis centers, the government help lines, are inadequate in number, uneven in quality, and structurally disconnected from the survivor's ongoing community and family context.

Nel Noddings's development of care ethics in "Caring: A Feminine Approach to Ethics and Moral Education" (1984) and Virginia Held's "The Ethics of Care" (2006) extend this analysis in directions that are directly relevant to policy design. They argue that a social arrangement that takes care seriously as a moral value would design its institutions around the recognition of human vulnerability and the organized social response to it, rather than around the protection of individual rights understood as fences against state interference. A justice system that truly embodied care ethics would be designed around the needs of survivors rather than around the procedural requirements of an adversarial system designed for abstract rights claimants.

CHAPTER THIRTEEN: LEGISLATIVE AND INSTITUTIONAL REFORM FOR GENDER JUSTICE

13.1 The Feminist Jurisprudence of Legal Reform

The feminist jurisprudence of legal reform, developed across several decades by scholars including MacKinnon, Clare Dalton, Patricia Williams, Mari Matsuda, and Kimberle Crenshaw herself, has produced a sophisticated account of the conditions under which legal reform actually advances the rights of the most marginalized women rather than merely changing formal arrangements while leaving structural inequalities intact. This account is directly relevant to evaluating India's reform agenda.

The central insight of feminist jurisprudence on reform is that law is not neutral in its application: even formally neutral rules operate within social contexts that are not neutral, and their actual effects are shaped by the power inequalities that structure those contexts. A law that formally prohibits marital rape but is administered by a police force that treats wives as the sexual property of husbands, prosecuted by prosecutors who accept the "she asked for it" defense, and adjudicated by judges who share the cultural assumptions that sustain the marital rape exception, will not deliver the protection it formally promises. Legal change that does not address the social and institutional conditions of application is inadequate.

This insight generates specific demands for the design of legal reform in India. Reform of rape law must be accompanied by reform of police training, investigation procedures, and accountability mechanisms. Reform of the PoA Act must be accompanied by reform of forensic capacity, special court functioning, and the training of special public prosecutors. Reform of the PWDVA must be accompanied by strengthening of the Protection Officers system, expansion of shelter capacity, and reform of family courts that handle related cases. And all legal reform must be accompanied by cultural transformation programs, in educational institutions, in media, and in political discourse, that address the social norms through which legal rights are systematically undermined.

13.2 The Demand for a Gender-Sensitive Criminal Justice System

The transformation of the criminal justice system into one that is genuinely gender-sensitive requires changes at every stage of the process, from the design of offenses through the investigation of complaints through the conduct of trials to the treatment of survivors within the justice system.

At the investigation stage, the most urgent reforms are: mandatory rotation of senior women officers to stations in areas with high rates of gender-based violence; mandatory Women's Help Desks with trained female officers in every police station; zero-tolerance enforcement of the requirement to register FIRs in cases of serious gender-based violence; independent forensic capacity reporting to the judiciary rather than the police in cases where the police are potential parties to the violation; and abolition of the two-finger test with criminal liability for any medical professional who conducts it.

At the prosecution stage, the most urgent reforms are: mandatory appointment of trained special public prosecutors for all PoA cases; independent victim advocates funded by the state to support

survivors throughout the legal process; and a victim impact statement procedure that requires courts to record and consider the specific impact of the offense on the survivor.

At the judicial stage, the most urgent reforms are: mandatory gender and caste sensitization training for all judges with regular refresher requirements; binding guidelines on the conduct of examination and cross-examination in sexual violence cases that prevent invasive questioning about past sexual history; and a specific obligation to deliver reasoned judgments in sexual violence cases that explicitly address the weight given to survivor testimony and the application of the law's requirements.

At the level of victim support, the most urgent reforms are: mandatory establishment of functioning One-Stop Crisis Centers in every district with adequate staffing and funding; expansion of the shelter home system with quality standards and independent oversight; creation of a national victim compensation fund with minimum mandatory awards in serious cases; and legal aid of quality equivalent to the prosecution's resources for survivors who are parties to criminal proceedings.

13.3 The Radical Demands: Abolishing the Marital Rape Exception and Reforming the PoA Act

Beyond the system-level reforms proposed above, two specific legal changes are demanded by the analysis throughout this Part as non-negotiable requirements of a legal system that genuinely protects women's rights.

The first is the immediate criminalization of marital rape through the removal of Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita. The philosophical, constitutional, and international human rights arguments for this reform have been established in Chapter Two and throughout this Part. The political obstacles are real but cannot be treated as a permanent justification for maintaining a legal rule that denies married women the right not to be raped. A parliamentary majority that refuses to criminalize marital rape because it conflicts with a patriarchal understanding of marriage is exercising legislative power in a manner incompatible with the constitutional guarantee of bodily autonomy and dignity.

The second is a fundamental revision of the PoA Act to address the causation problem analyzed in Chapter Three. The requirement to prove that a rape occurred "because of" the victim's Scheduled Caste identity should be replaced with a presumption of caste motive where the perpetrator is from a higher caste and the victim is from a Scheduled Caste, rebuttable by specific evidence that the offense was unrelated to caste. This reversal of the evidentiary burden in the specific context of intercaste violence reflects the reality that caste motivation in intercaste violence is the norm rather than the exception, and that requiring the prosecution to prove it affirmatively creates a barrier that cannot be overcome in most cases.

CHAPTER FOURTEEN: THEORIES OF RECOGNITION AND THE POLITICS OF ACKNOWLEDGMENT

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14.1 Axel Honneth and the Theory of Recognition

Axel Honneth's theory of recognition, developed in "The Struggle for Recognition" (1992) and extended in subsequent works, provides a philosophical framework for understanding the specific wrong that sexual and caste-based violence does to its victims that goes beyond the analysis of rights violations and encompasses the deeper dimension of dignity and selfhood.

Honneth argues that the human person's sense of self, their capacity for self-respect and self-esteem, is fundamentally dependent on recognition: on being seen and acknowledged by others in ways that confirm one's worth, one's humanity, and one's rights. He identifies three forms of recognition: love (in primary relationships), legal recognition (as a bearer of rights), and social esteem (as a contributor to a community of shared values). Corresponding to each form of recognition is a form of "misrecognition" whose experience constitutes a specific injury to personhood: abuse and rape correspond to the denial of love (in the sense of basic bodily respect), the denial of legal rights corresponds to the withholding of legal recognition, and cultural denigration corresponds to the denial of social esteem.

Applied to the situation of Dalit women in India, Honneth's framework reveals that the violation they experience is not merely a violation of specific rights but a comprehensive misrecognition of their personhood at all three levels. The rape of a Dalit woman by an upper-caste man is a form of misrecognition that denies her the basic bodily respect that Honneth associates with the "love" sphere: it treats her body not as the site of a person worthy of recognition but as an instrument of the perpetrator's dominance. The police officer who refuses to register her FIR performs a misrecognition in the legal sphere: he denies her legal standing as a bearer of rights whose complaint merits the response of the legal system. The community's treatment of her as contaminated or compromised by the violation she has suffered performs a misrecognition in the social sphere: it denies her the social esteem that she deserves as a member of the community.

Honneth's framework generates a specific political demand: that the struggle against gender and caste violence be understood not merely as a struggle for specific legal rights but as a struggle for recognition, for the acknowledgment of Dalit women's full humanity and equal worth. This demands legal reform, but it also demands something more: a cultural revolution in the attitudes, norms, and practices through which the worth of Dalit, Muslim, and Adivasi women is currently systematically denied.

14.2 The Politics of Apology and the Question of Reparation

The international transitional justice framework, developed in the context of post-conflict and post-authoritarian societies' efforts to address past violations and build sustainable peace, includes the concept of reparation as a component of accountability for serious human rights violations. Reparation, in international law, encompasses restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

The application of transitional justice frameworks to India is challenging and has been contested by scholars who argue that India is not a transitional society in the relevant sense, having maintained formal democratic institutions throughout the post-independence period. But the

concept of "transformative reparations" developed by Pablo de Greiff and others in the transitional justice literature has been extended by scholars including Ruth Rubio-Marin and Clara Sandoval to contexts of systematic discrimination and historical injustice that are not post-conflict but ongoing.

In this framework, the demand for reparation for the systematic violence against Dalit and Muslim women in India is not merely a demand for individual compensation but a demand for the acknowledgment of structural wrongdoing and the commitment to its transformation. The Tamil Nadu government's creation of a compensation fund for victims of caste atrocities, the Maharashtra government's establishment of welfare programs for devadasis, and the Supreme Court's monitoring of relief and rehabilitation under the PoA Act are all partial institutional responses to this demand. They are inadequate, but they are not irrelevant: they represent the state's acknowledgment, however incomplete and inconsistent, that systematic harm has been done and that some response is owed.

The demand for state apology for specific episodes of systematic violence, including for the Gujarat 2002 violence, for the Hathras case's institutional suppression, and for the decades of AFSPA-shielded security force violence against Kashmiri women, is a demand that the Indian state has consistently refused. This refusal is itself a form of misrecognition: it denies the reality of the violations, denies the humanity of the victims, and signals that the state regards these violations as within the acceptable range of its conduct. A state that genuinely acknowledged the humanity of Dalit women, Muslim women, and Kashmiri women would find the words to apologize for what has been done to them.

CHAPTER FIFTEEN: TOWARDS A FEMINIST CONSTITUTIONAL TRANSFORMATION

15.1 The Demand for Substantive Gender Equality

The analysis throughout Part Six has established that formal legal equality of the kind that the Indian Constitution provides, the formal prohibition of discrimination, the formal guarantee of equal protection, the formal rights to life, dignity, and bodily autonomy, is radically insufficient to address the actual situation of women in India, and particularly of Dalit, Muslim, and Adivasi women at the intersection of multiple forms of structural disadvantage.

The demand for substantive gender equality, grounded in the theoretical traditions surveyed in this Part, is a demand for the actual conditions of equality: the material conditions in which every woman can live a life that is safe from violence, in which her complaints are heard with the same seriousness as those of any other person, in which her bodily autonomy is genuinely protected rather than formally acknowledged and practically denied, and in which her contributions to economic and social life are recognized and rewarded on equal terms.

Substantive gender equality, in the tradition of Sandra Fredman's "four-dimensional framework of substantive equality," developed in "Discrimination Law" and subsequent work, requires

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attention to: the redistribution of disadvantage, which means addressing the material conditions that produce gender inequality; the recognition of dignity and stigma, which means confronting the cultural and institutional attitudes that deny women equal respect; the transformation of power relations, which means changing the institutional arrangements through which male dominance is reproduced; and participation and inclusion, which means ensuring that women have equal voice in the political and social processes that determine their conditions.

Each of these four dimensions demands specific reforms in the Indian context. Redistribution requires the full and meaningful implementation of social security programs for women, the elimination of structural barriers to women's economic participation including land ownership rights, credit access, and equal pay, and the comprehensive provision of public childcare that would release women from the gender-unequal burden of care work. Recognition requires the transformation of educational curricula and media culture to challenge the gender norms that sustain violence and discrimination. Transformation of power requires reform of the institutional cultures of police, courts, and bureaucracy through training, accountability, and diversity requirements. Participation requires full implementation of the constitutional reservation of seats for women in local government and the extension of reservation to state assemblies and Parliament.

15.2 The Intersectional Reform Agenda

The analysis of intersectionality throughout this Part demands that the reform agenda be specifically designed to address the compounded disadvantage of women who face multiple forms of subordination simultaneously. A feminist reform agenda that addresses gender inequality without addressing caste will deliver benefits primarily to upper-caste women. A Dalit rights reform agenda that addresses caste without addressing gender will deliver benefits primarily to Dalit men. The specific situation of Dalit women, Muslim women, Adivasi women, and transgender women requires specific programs that address their specific configuration of disadvantage.

The recognition of Dalit women as a distinct social group requiring specific policy attention, recommended by the NCWL and by the CEDAW Committee, is the beginning of the intersectional policy framework. Specific programs that are designed from the outset to address the combination of caste and gender disadvantage, rather than treating the two as separate concerns to be addressed by separate ministries and programs, are required. The data infrastructure to make such programs possible, disaggregated data on violence, educational outcomes, economic participation, and access to justice by caste and gender, must be built through a sustained investment in social statistics that the current government has, if anything, weakened.

The recognition of Muslim women's specific situation, at the intersection of religious minority status and gender inequality, requires a different set of specific measures. It requires that the legal framework governing Muslim family matters, including marriage, divorce, maintenance, and child custody, be reformed in ways that protect Muslim women's rights without the kind of majoritarian intervention that uses women's rights as a justification for targeting Muslim community autonomy. This is a delicate balance, but it is not impossible: the triple talaq case

(Shayara Bano v. Union of India, 2017), in which the Supreme Court struck down instantaneous triple talaq as unconstitutional, demonstrated that reform of Muslim personal law can be achieved through principled constitutional adjudication rather than communal legislation.

15.3 The Vision of a Society Free From Gender Violence

The ultimate aspiration of the analysis in this Part is the specification of what a society that had genuinely addressed the structural conditions of gender violence would look like, not as an achievable short-term political goal but as a regulative ideal against which current conditions are measured and toward which incremental reforms are oriented.

Such a society would be one in which every woman could move through public space without the constant background awareness of the threat of sexual violence. In which every workplace was genuinely safe from sexual harassment and assault. In which the police response to a complaint of rape was consistent, professional, and respectful of the survivor's dignity regardless of her caste, religion, or class. In which courts approached sexual violence cases with the presumption that the survivor is telling the truth and with the cultural understanding necessary to contextualize the specific forms of coercion and control that are involved. In which the bodies of Dalit women were not treated as available for upper-caste assertion of dominance. In which Muslim women were protected from sexual violence both as women and as members of a religious community whose specifically targeted sexual vulnerability is recognized and addressed. In which Kashmiri women were not subjected to security force sexual violence with complete impunity.

This vision is not utopian in the sense of being impossible of partial realization. Many of the specific reforms required for its partial realization have been identified in this Part and in Part Five. They are not technically impossible; they are politically obstructed. The obstruction comes from the same forces that produce the violations: from dominant caste interests in maintaining the hierarchies that sustain their privilege, from the Hindu nationalist political project whose gender politics reinforce brahmanical patriarchy, from institutional cultures in the police and judiciary that have resisted transformation for decades, and from the fundamental political economy of a democracy in which the most violated are the least powerful.

The task of feminist constitutionalism in India is to name these obstructions clearly, to build the political coalitions and social movements that can overcome them, and to use the legal and institutional tools that are available within the existing constitutional order to force incremental progress while building the conditions for the transformative change that the situation demands.

Concluding Analysis of Part Six

Part Six has conducted a comprehensive investigation of the intersection of gender and caste violence in India, moving from the philosophical foundations of feminist jurisprudence through the specific legal and institutional failures of the criminal justice system, through the ideological connections between Hindutva politics and the normalization of gender violence, through the

international legal obligations whose systematic breach is documented, to the philosophical demands of a genuine reform response.

The central finding of Part Six can be stated simply, though its implications are vast: the violation of the rights of women in India, and particularly of Dalit, Muslim, and Adivasi women, is not incidental to the constitutional and political order but is reproduced by it. The legal frameworks that formally prohibit discrimination are administered by institutional cultures that systematically discriminate. The political formations that claim to champion women's welfare simultaneously protect the brahmanical patriarchy that produces gender violence. The international obligations that should constrain state conduct are acknowledged in the abstract and violated in the specific. The philosophies of dignity and equal worth that ground the constitutional project are invoked in celebration of the Constitution's anniversaries and ignored in the daily practice of governance.

The victims of this system, the Dalit woman whose rape complaint is dismissed, the Muslim woman whose profile is "auctioned" online with police indifference, the Kashmiri woman violated by a soldier who enjoys AFSPA immunity, the Adivasi woman displaced from her land and subjected to security force violence, the married woman raped by her husband in a legal vacuum, are not abstractions. They are people whose lives, whose bodies, whose dignity, and whose futures are shaped every day by the choices of a political and constitutional system that has not yet recognized that its obligations to them are real and immediate and non-negotiable.

PART SEVEN: THE SECURITY STATE, COLLECTIVE PUNISHMENT, AND THE JURISPRUDENCE OF NATIONAL SECURITY: WHEN SOVEREIGNTY DEVOURS HUMAN RIGHTS

A Comprehensive Philosophical, Legal, Historical, and Political Analysis of National Security Doctrine, Collective Punishment, the Pahalgam Aftermath, Operation Sindoor, the Indus Waters Treaty Suspension, Bangladesh-India Relations, Digital Nationalism, and the Architecture of a Permanent State of Exception

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PREFATORY NOTE TO PART SEVEN

Parts One through Six of this textbook established the foundational architecture of India's human rights crisis. Part One traced the philosophical and jurisprudential roots of the problem. Part Two descended into the institutional machinery of violation. Part Three examined the mechanics of a failing democracy and the systematic capture of accountability institutions. Part Four analyzed India's external behavior as a regional hegemon and its transnational dimensions. Part Five conducted a detailed legislative and jurisprudential investigation of the constitutional framework that enables and legitimizes violation. Part Six turned to the most intimate and embodied dimensions of the crisis: the systematic violation of women's bodies, the weaponization of caste as an instrument of sexual control, and the feminist philosophical demands of a genuine reform response.

Part Seven turns to a dimension that has been present throughout the preceding analysis but has not yet received the systematic and comprehensive treatment it demands: the security state and its relationship to human rights. The phrase "security state" refers here not merely to the apparatus of police, military intelligence, and paramilitary forces, though those institutions are central to the analysis. It refers to a deeper phenomenon: the transformation of "security" from a means to protect people into an end that justifies the violation of those very people, the displacement of human security by state security, and the systematic subordination of the rights of individuals and communities to the claimed security interests of a sovereign that does not genuinely represent them.

This analysis has taken on extraordinary urgency in 2025 and 2026. The Pahalgam terrorist attack of April 22, 2025, and the Indian state's response to it, constitutes the most significant and concentrated instance of collective punishment, mass detention without due process, enforced displacement, and officially sanctioned communal violence that India has witnessed in recent years. The subsequent military operation, Operation Sindoor, launched against Pakistan on May 7, 2025, raises profound questions about the international law of the use of force, the proportionality principle, and the rights of civilian populations caught between two nuclear-armed states whose governments are both willing to use civilian suffering as an instrument of national policy. The suspension of the Indus Waters Treaty, announced by India on April 24, 2025, represents the most dramatic weaponization of water in modern South Asian history, a decision that threatens the survival of tens of millions of Pakistanis and constitutes a direct violation of binding international treaty law and customary international water law.

These events did not emerge from nowhere. They are the expression, in concentrated and dramatic form, of tendencies that have been building throughout the Modi years: the construction of an enemy image around which Hindu nationalist politics organizes itself, the legal and institutional infrastructure of a permanent state of exception, the willingness to use the instruments of international law instrumentally when they serve India's purposes and to violate them when they do not, and the systematic subordination of the interests of minorities, occupied peoples, and neighboring populations to the political imperatives of the dominant majority's self-image as a civilizational state besieged by hostile forces.

Part Seven examines these tendencies with the full depth of philosophical, jurisprudential, historical, and political analysis that they demand. It brings together the theory of the permanent state of exception as developed by Carl Schmitt and Giorgio Agamben and deploys that theory as an analytical tool for understanding the Indian security state. It examines the international law of collective punishment and demonstrates that India's post-Pahalgam crackdown constitutes collective punishment in the technical legal sense. It analyzes Operation Sindoor through the lens of the international law of the use of force, the jus ad bellum framework, and the laws of armed conflict. It subjects the Indus Waters Treaty suspension to rigorous analysis under treaty law, customary international law, and the emerging framework of the human right to water. It examines India's eastern dimension, including the transformation of the India-Bangladesh relationship following the fall of Sheikh Hasina's government in August 2024 and the human rights implications of India's treatment of Bangladesh's Muslim population and its border security conduct. It analyzes the specific jurisprudential questions raised by the growing use of digital technology as an instrument of nationalist repression. And it provides a comprehensive

philosophical synthesis of the relationship between security, sovereignty, and human rights, drawing on the traditions of liberal internationalism, realist international relations theory, cosmopolitan political philosophy, and the critical security studies scholarship that has fundamentally challenged the assumption that states genuinely exist to protect the security of their populations.

The analysis throughout is grounded in the most recent scholarly literature, in the documented record of events in 2024, 2025, and the early months of 2026, and in the jurisprudence of international human rights bodies including the UN Human Rights Committee, the Special Procedures of the Human Rights Council, the International Court of Justice, and the Permanent Court of Arbitration. It takes seriously the technical dimensions of legal doctrine while refusing to allow technical legal analysis to obscure the human dimensions of suffering that are the ultimate subject of any genuine human rights inquiry.

CHAPTER ONE: THE JURISPRUDENCE OF NATIONAL SECURITY: FROM DEROGATION TO PERMANENT EXCEPTION

1.1 The Theoretical Problem: Security and Rights in Tension

The tension between security and rights is one of the most ancient and persistent problems in political philosophy and legal theory. It predates the modern state and the modern conception of human rights. Thucydides records the Athenian generals' argument at Melos that the strong do what they can and the weak suffer what they must, the brutal articulation of a security logic that recognizes no rights as limitations on power. Machiavelli, in the Discourses, argued that extraordinary times require extraordinary measures, and that the leader who permits the state to be destroyed by punctilious adherence to law does greater wrong than the leader who violates law to preserve the state.

The modern constitutional state emerged partly as a response to this logic. The great constitutional settlements of the seventeenth, eighteenth, and nineteenth centuries were premised on the idea that there are limits to what states can do to their own subjects even in the name of security, limits that derive from the inherent dignity and rights of the human person and that cannot be set aside merely because the sovereign finds them inconvenient. The habeas corpus tradition in English law, the Fourth and Fifth Amendments to the United States Constitution, and the fundamental rights provisions of modern constitutions all represent attempts to constitutionalize those limits, to make them legally enforceable against the very power whose security claims most threaten them.

But the constitutional settlement was never complete. Emergency powers, derogation clauses, and exceptions to rights guarantees have been built into constitutional frameworks from the beginning, reflecting the recognition that genuinely extreme circumstances might require temporary suspension of normal rights protections. The problem, which has become the defining jurisprudential challenge of the contemporary period, is that the "temporary" has become permanent, the "exception" has become the norm, and the "extreme circumstances" that were

supposed to justify suspension of rights have been defined so broadly as to encompass ordinary politics.

This is precisely the problem that Carl Schmitt identified, with characteristically provocative force, in his 1922 work "Political Theology." Schmitt's famous formulation "sovereign is he who decides on the exception" captured something real about the relationship between sovereignty and emergency power: the decision to declare a state of exception, to suspend the normal legal order in the name of protecting it, is itself an exercise of sovereign power that stands outside the normal legal framework. The sovereign is not bound by the law precisely at the moment when the law's suspension is most consequential for those who live under it.

Schmitt drew the wrong conclusions from this insight, using it to argue for an authoritarian constitutionalism in which the strong executive was the true expression of political unity. But the insight itself, that emergency power creates a space outside normal legal constraint, is analytically correct and deeply important. Giorgio Agamben, in his 2005 work "State of Exception," developed Schmitt's analysis in a more critical direction, arguing that the state of exception has become not merely a possibility within the constitutional order but the dominant paradigm of government in contemporary states. The state of exception, far from being a temporary response to specific crises, has become a permanent condition in which the constitutional guarantees that are supposed to protect individuals are systematically suspended in the name of the very security those guarantees were intended to provide.

Agamben's analysis draws on Foucault's concept of biopolitics: the specific form of power that takes life itself as its object, managing populations rather than governing persons. In the biopolitical state of exception, categories of people are created, what Agamben calls "bare life," whose rights have been suspended and who can be subjected to state violence without the normal protections of law. The concentration camp, for Agamben, is the paradigmatic institution of this logic: a space in which human beings are present but their legal status has been stripped away, leaving them exposed to naked power.

One does not have to accept the full weight of Agamben's provocative theoretical apparatus to see its applicability to India's security state. The parallels are structural and disturbing. Agamben's "bare life" is visible in the Kashmiri detained under the Public Safety Act without trial for two years, stripped of normal legal protection by an administrative order that no court can adequately review. It is visible in the Adivasi accused of Maoist links under the UAPA, imprisoned for years without trial while fabricated digital evidence is maintained as the basis of prosecution. It is visible in the Rohingya refugee pushed across the India-Bangladesh border by the Border Security Force after the Pahalgam attack, expelled from the legal space of India into a void where no state claims responsibility for them. And it is visible, in its most concentrated form, in the detention camps established for those designated as "illegal migrants" under the National Register of Citizens process in Assam, where tens of thousands of people of uncertain legal status live in conditions of indefinite administrative limbo, neither recognized citizens nor deportable foreigners.

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1.2 The Constitutional Framework of Exception in India

The Indian Constitution, as noted in Part One, contains an elaborate framework of emergency powers. Article 352 authorizes a national emergency, Article 356 authorizes President's Rule in states, and Article 360 authorizes a financial emergency. These provisions were understood by the framers as genuinely exceptional mechanisms, to be invoked only in situations of genuine constitutional necessity. The Emergency period of 1975 to 1977 demonstrated how easily these provisions could be abused, and the Forty-Fourth Amendment of 1978 introduced some additional safeguards. But the basic structure of emergency powers, and more importantly the culture of exception that surrounds them, has never been adequately addressed.

The more insidious dimension of India's permanent state of exception is not the formal emergency powers framework but the system of special-purpose legislation that creates permanent emergency-equivalent conditions in specific territories and for specific categories of people without invoking formal emergency powers. The Armed Forces Special Powers Act creates a permanently operational exception for large parts of India's territory: an exception to the right to life, to the right to liberty, to the right to judicial review of detention, and to the principle of equality before the law. The Unlawful Activities Prevention Act creates a permanent exception to the presumption of innocence, to the right to bail, to the normal standards of evidence in criminal proceedings, and to the right to challenge one's own detention effectively. The Public Safety Act in Jammu and Kashmir creates a permanent exception to the right not to be detained without judicial authorization. And the National Security Act creates a permanent exception to the right of habeas corpus in its full sense.

The jurisprudence of these exceptional regimes has been characterized by what the critical legal theorist Roberto Mangabeira Unger would call "formalism without substance": the courts apply formal legal criteria to review detention orders, charge sheets, and bail applications while systematically avoiding substantive engagement with whether the legal standards are themselves adequate to protect the rights they purport to protect. The Supreme Court's bail standard in UAPA cases, requiring the accused to establish that the charge against them is "prima facie not true" before bail can be granted, is formalism of this kind: it provides a formal framework for bail review while ensuring that the framework cannot be effectively invoked by any accused person against whom even the flimsiest charge sheet has been filed.

The jurisprudential challenge here is to articulate a standard of review that is genuinely rights-protective without ignoring the genuine security concerns that emergency legislation is designed to address. The European Court of Human Rights has developed a substantial body of jurisprudence under Article 15 of the European Convention, which provides for derogation from Convention rights "in time of war or other public emergency threatening the life of the nation." The Court requires that the state of emergency be formally proclaimed, that the measures taken be strictly required by the exigencies of the situation, and that they be consistent with the state's other obligations under international law. These requirements have been consistently violated by India's permanent exception framework, which is not formally proclaimed as a national emergency, which is not subject to the "strictly required" proportionality analysis the ECHR demands, and which is systematically inconsistent with India's obligations under the ICCPR.

The Human Rights Committee's General Comment 29, which provides authoritative interpretation of the ICCPR's Article 4 derogation clause, is particularly relevant. The Committee insists that even in genuine states of emergency, certain rights are non-derogable: the right to life, the prohibition of torture, the prohibition of slavery, and several others. The Committee also insists that the measures taken must be strictly required by the exigencies of the situation, which requires a genuine proportionality analysis that India's courts have largely failed to conduct.

1.3 The Permanent Exception and Democratic Decay

The permanent state of exception does not merely violate specific human rights provisions. It has a systemic effect on the entire constitutional order and on the quality of democratic governance. When emergency powers become routine, when security exceptions become the normal mode of governance for significant portions of the population, the constitutional foundation of democratic legitimacy is eroded in ways that extend far beyond the specific populations subjected to the exceptional regime.

This point has been developed with great sophistication by the democratic theorist Samuel Issacharoff, whose work on "fragile democracies" analyzes how constitutional democracies can undermine their own foundations through institutional arrangements that concentrate power and remove accountability. Issacharoff's analysis, though developed primarily in the context of post-conflict democratization, is directly applicable to the Indian situation. The Indian constitutional democracy was never fully consolidated in the sense of establishing a genuine culture of constitutional constraint among all political actors. The permanent exception has provided a legal and institutional framework within which the anti-constitutional impulses of the Hindu nationalist project can operate with at least formal legal authorization.

The relationship between the permanent exception and democratic decay has been analyzed in the specific Indian context by Pratap Bhanu Mehta, one of India's most distinguished political theorists, whose work on Indian democracy has consistently identified the gap between the formal democratic institutions and the genuinely democratic culture that those institutions require to function well. In a series of essays in 2024 and 2025, Mehta has argued that the Indian state under the Modi government has completed what he describes as a transition from "democracy with authoritarian features" to "authoritarianism with democratic features": a political system in which elections continue to be held and formally contested, but in which the conditions of genuine democratic competition, a free press, an independent judiciary, a vibrant civil society, equal access to state resources for political competitors, have been so severely compromised that the democratic form has been largely emptied of democratic substance.

The concept of "competitive authoritarianism," developed by political scientists Steven Levitsky and Lucan Way in their influential 2002 article and book, is directly applicable here. Competitive authoritarianism describes a regime type in which meaningful democratic competition exists but in which the incumbent systematically tilts the playing field through selective application of law, manipulation of electoral rules, capture of supposedly neutral institutions, and the use of state resources for partisan purposes. India under the Modi government exhibits all of these features. The security state, with its permanent exception framework, is a crucial element of the competitive authoritarian arrangement: it provides the tools for selectively silencing political

opponents, suppressing civil society organizations that challenge the dominant narrative, and maintaining a climate of fear that disciplines political participation.

1.4 The Theory of the "Enemy Within" and Its Indian Manifestation

The security state logic requires an enemy, and the construction of that enemy is itself a political act with profound human rights implications. The identification of specific populations as security threats, as the "enemy within" against whom exceptional measures are justified, is a fundamental mechanism through which minority communities are subjected to collective punishment, their rights suspended in the name of protecting the majority from a threat they are supposed to embody.

The political theory of the enemy within has been analyzed most powerfully by the critical theorist Chantal Mouffe, whose "agonistic" theory of democracy argues that all politics involves the construction of a "us" and a "them," but that the crucial distinction is between legitimate adversaries in democratic politics and existential enemies whose presence threatens the very existence of the political community. The pathology of the security state occurs when legitimate political adversaries or minority communities are constructed as existential enemies, requiring not political competition but elimination or suppression.

In the Hindu nationalist political imagination, Muslims have been constructed as precisely this kind of existential enemy. The construction draws on the Partition narrative, on the post-Partition wars, on the Kashmir conflict, on the global "threat" of Islamic extremism, and on the internal demographic anxieties generated by Hindu nationalist demographic discourse. The recurring trope of "Love Jihad," which alleges a Muslim conspiracy to seduce Hindu women as part of a demographic takeover, the concept of "infiltrators" applied to the Bengali Muslim population, the characterization of the entire Muslim community as a potential "fifth column" after terrorist attacks, all represent the translation of the enemy within logic into electoral politics and state policy.

The consequences for human rights are systematic and severe. When a community has been constructed as an existential enemy, the normal rights-respecting treatment of that community as fellow citizens with equal dignity and equal legal protection becomes politically impossible for those who have invested in the enemy construction. The logic of the permanent exception, of suspended rights and exceptional measures, follows naturally from the enemy construction: one does not extend normal legal protections to enemies.

This analysis is directly applicable to the post-Pahalgam crackdown of 2025, which will be examined in detail in Chapter Two. The construction of the Muslim community as collectively responsible for the actions of a terrorist group, the suspension of normal due process protections for thousands of Muslim detainees, the expulsion of Bengali Muslims from multiple Indian states on the pretext that they might be "illegal immigrants," the demolition of Muslim-owned properties in Kashmir and across India as collective punishment for the terrorist attack, all represent the practical application of the enemy within logic to a specific triggering event. The triggering event does not create the logic; it merely provides the occasion for its expression in policy and practice.

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CHAPTER TWO: COLLECTIVE PUNISHMENT AS STATE POLICY: THE PAHALGAM AFTERMATH AS CASE STUDY

2.1 The Attack and Its Immediate Aftermath

On April 22, 2025, a terrorist attack near the town of Pahalgam in Indian-administered Kashmir killed twenty-six people, most of them Hindu tourists. The attack was claimed by the Resistance Front, a proxy organization of the Pakistan-based Lashkar-e-Taiba, designated as a terrorist organization by the United Nations. The brutality of the attack, in which tourists were separated, asked to identify their religion, and shot at close range, was designed for maximum psychological impact and achieved it: the attack generated massive public outrage in India and brought the India-Pakistan confrontation to its most intense level in decades.

The attack was a terrorist act and must be condemned unequivocally as such. This textbook has never suggested that terrorist violence is an acceptable response to human rights violations, and it does not suggest so here. The families of the twenty-six victims deserve justice. The perpetrators deserve prosecution. And India has a legitimate security interest in preventing future attacks.

But the response of the Indian state to the attack went far beyond any legitimate security measure. It demonstrated, in concentrated and documented form, precisely the pattern of collective punishment, mass detention without due process, enforced displacement, and officially sanctioned communal violence that the international human rights framework explicitly prohibits.

According to the UN Special Procedures' joint statement of November 24, 2025, following the attack Indian authorities launched sweeping operations across Jammu and Kashmir, resulting in the arrest and detention of approximately 2,800 individuals, including journalists and human rights defenders. This figure, from the authoritative source of the UN Special Rapporteurs, establishes the scale of the detention operation. The detained individuals were not, in the main, terrorists or even terrorism suspects. They were people caught in the broad sweep of a security operation explicitly designed to demonstrate state power rather than to address specific security threats.

The UN Special Procedures experts expressly condemned "reports of arbitrary arrests and detentions, suspicious deaths in custody, torture and other ill-treatment, lynchings, and discriminatory treatment of Kashmiri and Muslim communities," and highlighted reports of "punitive house demolitions and forced evictions and arbitrary displacement, targeting families of individuals perceived as supporting the militants, and carried out without court orders or due process." OHCHR

The specific finding that house demolitions targeted "families of individuals perceived as supporting the militants" is crucial. It establishes that the demolitions were not directed at the militants themselves or even at individuals proven to have any connection to them. They were

directed at families: at mothers, siblings, spouses, and children of people who were "perceived" to have a connection to militancy. This is collective punishment in the strict legal sense: the punishment of individuals for the actions of others based on a presumed or attributed association.

The international human rights experts expressly noted that such actions defy the 2024 Supreme Court ruling, which found that demolitions used as punishment are unconstitutional and violate the rights to life and human dignity. The Supreme Court had, in October 2024, issued a comprehensive direction prohibiting the use of demolitions as punishment for alleged criminal activity. The post-Pahalgam demolitions were therefore not merely a violation of international human rights law: they were a direct and explicit defiance of the Supreme Court of India's own binding constitutional ruling.

2.2 The Legal Prohibition of Collective Punishment

The prohibition of collective punishment is one of the most fundamental principles of international humanitarian law and international human rights law. It is expressed in multiple sources and has been recognized as part of customary international law.

Article 33 of the Fourth Geneva Convention, which applies to the treatment of civilians in situations of armed conflict and occupation, states explicitly: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited." The ICRC Customary International Humanitarian Law study, published in 2005 and subsequently updated, identifies the prohibition of collective punishment as Rule 103, applicable in both international and non-international armed conflicts and as a norm of customary international law.

The UN Human Rights Committee, interpreting the ICCPR, has consistently held that collective punishment violates multiple provisions of the Covenant, including Article 6 (right to life, violated when collective punishment results in deprivation of life), Article 7 (prohibition of cruel, inhuman or degrading treatment), Article 9 (right to liberty, violated when individuals are detained for the actions of others), and Article 17 (right to home and privacy, violated when homes are demolished as collective punishment).

The jurisprudential basis for treating India's post-Pahalgam crackdown as collective punishment is therefore clear. The detention of 2,800 individuals in Kashmir, including journalists and human rights defenders who have no conceivable connection to the terrorist attack, constitutes collective punishment. The demolition of homes of individuals "perceived as" having connections to militancy, without judicial determination of any such connection, constitutes collective punishment. The nationwide crackdown on Bengali-speaking Muslims, including Indian citizens, ostensibly searching for "illegal Bangladeshis" in the aftermath of a terrorist attack in Kashmir, constitutes collective punishment of an entire community for the actions of a small number of terrorists with whom they have no established connection.

2.3 The Nationwide Anti-Muslim Crackdown

The collective punishment visited on Kashmiri and Muslim communities extended far beyond the boundaries of Jammu and Kashmir. Across India, the post-Pahalgam period witnessed a surge in anti-Muslim violence, institutional discrimination, and state-facilitated harassment on a scale that demands systematic analysis.

In the two weeks after the attack, India Hate Lab recorded 64 in-person hate speech incidents against Muslim minorities across 16 states. A separate compilation by the Association of Protection of Civil Rights documented at least 184 hate crimes targeting Muslims between April 22 and May 8, highlighting a sharp and alarming surge in anti-Muslim violence nationwide. Theinsighta

Following the deadly attack in Jammu and Kashmir, hate speech against Muslims increased, with at least 64 incidents reported in the first 10 days. Muslims were attacked in various states. A Hindu man claimed responsibility for shooting a Muslim worker in Uttar Pradesh as retribution for the Kashmir attack. In Karnataka, a Muslim man was killed after he allegedly shouted pro-Pakistan slogans during a cricket match. Human Rights Watch

These incidents are not spontaneous expressions of popular anger. They are the product of a political culture and a media environment that has systematically constructed Muslim identity as a marker of disloyalty and potential threat. When Hindu nationalist politicians and affiliated media organizations characterize the Pahalgam attack as an expression of Muslim religious violence, when national broadcast networks use the attack to amplify years of accumulated anti-Muslim sentiment, and when local BJP officials use the occasion to launch what they describe as crackdowns on "illegal Bangladeshis," the resulting violence against Muslim communities is not incidental. It is the predictable and in some respects intended outcome of a decade of systematic dehumanization.

As documented by the India Persecution Tracker, in the aftermath of the April 2025 attack in Pahalgam, Indian authorities launched a sweeping, nationwide crackdown targeting Bengali-speaking Muslims and Rohingya refugees from Myanmar, accused of being "illegal immigrants." Across India, hundreds, including Indian citizens, continued to be arbitrarily detained, accused of being "illegal immigrants" from Bangladesh and Myanmar, with the scale of the crackdown, lack of information around the detentions, the targeting of citizens and legal residents, and denial of due process raising serious concerns about the use of mass arrest as a tool of retribution against vulnerable Muslims. Southasiajusticecampaign

The use of immigration enforcement as a tool of ethnic and religious targeting deserves close analysis. The "illegal Bangladeshi" discourse in Indian politics, particularly BJP politics, has a specific ideological function: it constructs the Muslim population of Bengal, West Bengal, and Assam as a demographic threat, a population that does not belong in India and whose presence constitutes both a security risk and a cultural invasion. This discourse predates the Pahalgam attack by many years, going back to the NRC process in Assam and the Citizenship Amendment Act's implicit message that Muslim migration is inherently suspect while non-Muslim migration is a matter for compassion and legal accommodation.

The post-Pahalgam mobilization of this discourse involved the deployment of state power, including police, immigration authorities, and detention facilities, against a population that is overwhelmingly composed of Indian citizens whose families have lived in Bengal for generations. The targeting of people who "look like" or "speak like" Bangladeshis, without any individual determination of their actual legal status, is a form of racial and religious profiling that violates Article 14 of the Indian Constitution, Article 26 of the ICCPR (which prohibits discrimination in the application of law), and the specific prohibition of discrimination on grounds of religion in Article 15 of the Constitution.

2.4 The Signboards of Exclusion and the Normalization of Apartheid

One of the most disturbing specific manifestations of the post-Pahalgam anti-Muslim crackdown was documented in Rajasthan: the appearance of signboards in multiple villages prohibiting the entry of Muslims. These signboards, reported in mid-May 2025, represent a form of spatial exclusion that is directly analogous to the apartheid signboards that excluded Black South Africans from "white" public spaces, and to the signs that excluded Jews from public spaces in Nazi Germany.

The constitutional prohibition of discrimination in public spaces in India, grounded in Article 15 and reinforced by the Protection of Civil Rights Act of 1955, makes such signboards unambiguously illegal. The state of Rajasthan and the central government have constitutional and statutory obligations to remove the signs, prosecute those responsible for them, and take measures to ensure that Muslim residents of the affected areas can access public spaces without discrimination. The failure to do so represents state complicity in the discrimination through the mechanism of non-enforcement.

The jurisprudential concept of "positive discrimination obligations," developed in the jurisprudence of the European Court of Human Rights and affirmed by the UN Human Rights Committee, holds that states are responsible not only for their own discriminatory acts but for their failure to prevent private discriminatory conduct when they have knowledge of it and the capacity to address it. In the context of villages erecting anti-Muslim signboards, the Indian state's failure to act constitutes a violation of its positive discrimination obligations under both domestic and international law.

The sociological significance of these signs extends beyond their legal character. They represent the normalization, in public space, of the idea that Muslims are not full members of the Indian community with equal rights to live, travel, and participate in public life. The philosopher Charles Taylor, in his work on the "politics of recognition," argues that misrecognition, the denial of equal recognition to persons or groups, is itself a form of harm that damages identity and self-worth. The village signboards are instruments of systematic misrecognition: they communicate to Muslim residents and travelers that they are not recognized as equal members of the civic community.

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2.5 The Kashmiri Students and the Phenomenon of Targeted Harassment

A particularly disturbing dimension of the post-Pahalgam collective punishment was the targeting of Kashmiri students studying in educational institutions across India. The UN Special Procedures experts expressly noted that "Kashmiri students were subject to surveillance and harassment, following Government directives requiring universities to collect their personal data."

The collection of personal data from Kashmiri students by universities, on government direction, is an extraordinary measure that directly violates multiple fundamental rights. It violates the right to privacy established in the Puttaswamy judgment of 2017, which recognized that the right to privacy is a fundamental right under Article 21 that applies even to university students. It violates the right to equality, because no comparable data-collection exercise was directed at students of other identities. And it violates academic freedom, by creating a surveillance environment in which Kashmiri students cannot pursue their studies without awareness of official monitoring.

But the government directive was merely the official expression of a broader atmosphere of hostility and discrimination targeting Kashmiri students. Reports in April and May 2025 documented Kashmiri students being harassed in hostels, cafeterias, and public spaces across Indian cities. Students were pressured by landlords to vacate accommodation. They were attacked verbally and in some cases physically by other students and members of the public. Some fled their universities and returned to Kashmir rather than face the sustained harassment.

This harassment was enabled by the official narrative that characterized Kashmiri Muslims as collectively responsible for the Pahalgam attack. When the Prime Minister uses language that blurs the distinction between the perpetrators of a terrorist attack and the Muslim-majority population of Kashmir, when ruling party politicians make statements that treat Kashmiris as a security threat to be managed rather than a citizenry to be served, the resulting popular hostility toward Kashmiri students is not incidental. It is the social translation of official political messaging.

The legal principle violated here is established in international human rights law. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in 1992, protects the right of persons belonging to minorities to participate in cultural life, to maintain their identity, to use their language, and to participate effectively in decisions that affect them, without discrimination. The targeting of Kashmiri students for surveillance and harassment violates this framework comprehensively.

CHAPTER THREE: OPERATION SINDOOR AND THE INTERNATIONAL LAW OF THE USE OF FORCE

3.1 The Event and Its Legal Significance

Late on May 6 and into May 7, 2025, India's military launched "Operation Sindoor" with drone and missile strikes on nine alleged terrorist targets in both Pakistani-held Kashmir and Pakistan proper, including the alleged Lashkar-e-Taiba headquarters and that of Jaish-e-Mohammed, both in Pakistan's Punjab heartland. The strikes were India's most extensive since 1971. Congress.gov

Operation Sindoor is a watershed event in South Asian security and in the international law of the use of force. It represents India's most extensive military action against Pakistani territory since the 1971 war that created Bangladesh. The legal questions it raises are fundamental: Was the use of force lawful under international law? Were the specific targets selected in accordance with the laws of armed conflict? What are the human rights implications of a military operation in which civilians on the Pakistani side were killed? And what does India's willingness to use armed force against a nuclear-armed neighbor tell us about its security doctrine and its relationship with international legal norms?

The international law framework governing the use of force between states is established primarily in the UN Charter. Article 2(4) prohibits the use of force against the territorial integrity or political independence of any state. Article 51 provides an exception for self-defense in the event of an armed attack, until the Security Council takes measures necessary to maintain international peace and security. Customary international law has supplemented these provisions with the requirements of necessity and proportionality: any use of force in self-defense must be necessary to address the threat and proportionate to the harm suffered and the security objective pursued.

India's legal justification for Operation Sindoor rested on Article 51: the claim that the Pahalgam attack constituted an "armed attack" by Pakistan, or by groups acting with Pakistan's effective control, that triggered India's right of self-defense. The critical legal questions are: Was the Pahalgam attack attributable to Pakistan under international law? Was the use of force in response necessary and proportionate? And did the operation comply with the laws of armed conflict?

3.2 Attribution: Did Pakistan Bear State Responsibility for the Pahalgam Attack?

The question of state responsibility for terrorist attacks carried out by non-state actors has been one of the most contested and important questions in international law since the September 11, 2001 attacks. The International Court of Justice, in Nicaragua v. United States (1986), established the "effective control" test for attribution: state responsibility arises when the state exercises effective control over the specific conduct of the non-state actor. In Congo v. Uganda (2005), the Court applied a somewhat more flexible approach, finding Uganda responsible for the conduct of armed groups "largely controlled" by Ugandan forces. The International Law Commission's Articles on State Responsibility (2001) codify the standard in Article 8: a non-state actor's conduct is attributable to a state if the state directs or controls the specific operation.

India has consistently claimed that Pakistan's Inter-Services Intelligence (ISI) maintains operative control over militant groups including Lashkar-e-Taiba and Jaish-e-Mohammed, and

that this control was exercised in relation to the Pahalgam attack. Pakistan has denied responsibility. The factual question of whether Pakistan exercised the level of control required by international law's attribution standards to make the Pahalgam attack attributable to the Pakistani state has not been independently established through any international legal process.

The Caroline doctrine, derived from a diplomatic exchange between the United States and Britain in 1837-1842, established early principles of self-defense against non-state actors: the necessity must be "instant, overwhelming, and leaving no choice of means, and no moment for deliberation," and the response must not be "unreasonable or excessive." These criteria have been incorporated into contemporary international law. Whether the Pahalgam attack met the threshold of being so instant and overwhelming as to justify India's extensive military action weeks after the event, and whether the military response was necessary in the sense of leaving no alternative, are deeply contested questions that India has not submitted to independent international adjudication.

The UN Security Council failed to take any collective action in response to the India-Pakistan crisis, as anticipated given the geopolitical considerations affecting the Council's membership. The absence of UN collective security action meant that the legal justification for Operation Sindoor rests entirely on the self-defense exception, and the adequacy of that justification is contested by most international legal scholars.

3.3 Proportionality and the Civilian Casualty Question

Pakistan condemned India's strikes as "an unprovoked and blatant act of war," claiming at least 31 people were killed, including women and children, and declaring that "the deliberate targeting of civilians, including innocent women and children, by the Indian military constitutes a heinous and shameful crime, that is in violation of all norms of human behaviour and the provisions of international law." Al Jazeera

India denied deliberately targeting civilians, characterizing the operation as "focused, measured and non-escalatory in nature." The competing factual claims about civilian casualties have not been independently verified. This is itself a human rights concern: the absence of independent international monitoring of the civilian impact of Operation Sindoor means that accountability for any violations of the laws of armed conflict is dependent entirely on the parties' own investigations, which are not adequate under international standards.

The laws of armed conflict, established in the Geneva Conventions and their Additional Protocols, require that parties to a conflict distinguish at all times between combatants and civilians, that attacks be directed only against military objectives, that attacks which would cause disproportionate civilian casualties in relation to the expected military advantage be prohibited, and that all feasible precautions be taken to minimize civilian harm. These rules apply in non-international armed conflicts under customary international humanitarian law and, if the conflict constitutes an international armed conflict, under Additional Protocol I.

The targeting of alleged terrorist infrastructure in populated areas, including claims of strikes near mosques, raises serious questions under the proportionality and distinction principles. Even

if the targeted locations were genuine operational centers of the designated terrorist groups, the presence of civilian populations in and around those locations requires a detailed assessment of whether the attack complied with the proportionality rule. That assessment has not been transparently conducted or independently reviewed.

The human rights dimension extends beyond the direct casualties. The populations of the cities and regions struck, with "Pakistan's six largest cities within 110 miles of the border," Congress.gov were subjected to a period of extreme fear, displacement, and economic disruption whose human costs extend far beyond the immediate casualties. The right to live free from fear, which the Universal Declaration articulates and which can be derived from the right to human dignity, is violated when a nuclear-armed neighbor launches a military operation that threatens the safety of urban populations.

3.4 The Escalation, the Ceasefire, and the Unresolved Legal Questions

Following India's Operation Sindoor, Pakistan launched a retaliatory operation codenamed "Operation Bunyan-um-Marsoos" targeting several Indian military bases. After three days of conflict, both India and Pakistan announced a ceasefire. Following the deadline, both countries accused each other of violating the ceasefire agreement. The United Nations urged both sides to have "maximum restraint" and to resolve the issues diplomatically. Wikipedia

The rapid escalation from India's initial strikes to Pakistan's retaliation, to exchanges of artillery, drone strikes, and missile fire across the Line of Control and the international border, demonstrated the catastrophic risk embedded in the India-Pakistan security dynamic. Both states possess nuclear weapons. Both have adopted doctrines of limited war under the nuclear shadow, which assume that conventional military conflict can be controlled and terminated before it reaches the nuclear threshold. The 2025 crisis tested those assumptions and found them fragile.

The human rights community has been insufficiently attentive to the way in which nuclear weapons doctrine itself violates human rights. The philosopher David Luban, in his work on just war theory, has argued that nuclear deterrence is inherently a hostage-taking strategy: it works by threatening to kill the civilian populations of adversary states in response to nuclear attack. This threat, which is the operational core of nuclear deterrence, is incompatible with the prohibition of attacks on civilians that is foundational to both international humanitarian law and international human rights law. The willingness of both India and Pakistan to put their nuclear doctrines into play in the context of the 2025 crisis represents not merely a security risk but a fundamental challenge to the human rights of hundreds of millions of people who live within range of potential nuclear strikes.

The legal questions raised by Operation Sindoor remain unresolved. India has not submitted to any independent legal accountability mechanism. Pakistan has raised the matter before the UN Security Council but obtained no binding resolution. The Permanent Court of Arbitration, which has jurisdiction over certain disputes under the Indus Waters Treaty, is a partial forum for some of the post-Pahalgam legal questions but not for the jus ad bellum issues. The absence of an international judicial forum with jurisdiction over the legality of the use of force in this context,

other than the ICJ which requires consent of both parties, is a structural gap in the international accountability framework.

3.5 The Arrest of Professor Ali Khan Mahmudabad: Free Speech in Wartime

One of the most revealing post-Operation Sindoor incidents was the arrest of Dr. Ali Khan Mahmudabad, a professor of political science at Ashoka University. Mahmudabad, a professor from Ashoka University in India, was arrested on charges under laws concerning incitement of communal disharmony, subversive activity, and religious insult, following social media posts about India's Operation Sindoor. In his posts, he questioned the use of Muslim women officer Sofiya Qureshi for optics and highlighted issues like mob lynching on Muslims in India during the conflict. Wikipedia

The incident sparked condemnation from over 1,200 academics and civil society members, who called it a crackdown on free speech and academic freedom. He was later granted interim bail by the Supreme Court of India, but the Supreme Court restrained him from further commenting on the 2025 Pahalgam attack as well as Operation Sindoor. Wikipedia

The Supreme Court's condition of bail, which restrained Professor Mahmudabad from commenting on the very events that were the subject of public debate throughout Indian society, is an extraordinary and deeply troubling judicial intervention. The right to freedom of expression, guaranteed by Article 19 of the Indian Constitution and by Article 19 of the ICCPR, includes the right to criticize government military operations, to raise concerns about communal violence, and to participate in public debate about matters of urgent national concern. A court order that specifically restrains an individual from participating in this debate, as the price of his liberty, is a form of judicial prior restraint that is incompatible with the constitutional guarantee of free expression.

The case illustrates a broader pattern: the use of criminal law and judicial process as instruments of political silencing in the context of the India-Pakistan crisis. The message sent by Mahmudabad's arrest and the Supreme Court's conditions is clear: criticism of India's military operations, expressions of concern about anti-Muslim violence, and the raising of uncomfortable questions about the use of Muslim women for "optics" in military communications are treated as legally punishable conduct rather than as legitimate and constitutionally protected speech. This represents the securitization of political discourse: the transformation of political disagreement into a security offense in the context of military conflict.

CHAPTER FOUR: THE INDUS WATERS TREATY SUSPENSION: WATER AS A WEAPON AND THE VIOLATION OF INTERNATIONAL LAW

4.1 The Historical Significance of the Indus Waters Treaty

The Indus Waters Treaty of 1960, brokered by the World Bank and signed by India's Prime Minister Jawaharlal Nehru and Pakistan's President Ayub Khan, is one of the most significant

bilateral agreements in South Asian history and one of the most important water-sharing agreements in the world. It survived four wars between India and Pakistan, the 1971 crisis that split Pakistan in two, and decades of bilateral hostility characterized by proxy conflicts, terrorist attacks, and nuclear sabre-rattling. For over six decades, the IWT endured various diplomatic breakdowns, violent escalations, and full-scale wars between India and Pakistan as well as surging nationalism on both sides, without being seriously questioned by either party. Clingendael

The Treaty divides the six rivers of the Indus basin between the two countries. The Eastern Rivers, the Ravi, Beas, and Sutlej, are allocated predominantly to India. The Western Rivers, the Indus itself, the Jhelum, and the Chenab, are allocated to Pakistan, subject to specified Indian uses for purposes including irrigation, hydroelectric generation, and navigation. The Western Rivers are critical to Pakistan's agricultural economy, which is heavily dependent on irrigation from the Indus basin. Approximately eighty percent of Pakistan's irrigated agriculture depends on the Western Rivers.

The Treaty created the Permanent Indus Commission, consisting of representatives of both states, to coordinate implementation and resolve disputes at the technical level. Disputes that cannot be resolved by the Commission are referred first to a Neutral Expert and, if still unresolved, to a Court of Arbitration under Annexure G to the Treaty.

This dispute resolution framework is itself a remarkable achievement: it provides a specific legal mechanism for resolving technical disagreements without requiring the broader political relationship to be in good order. The survival of the Treaty through multiple wars demonstrated its operational resilience: water management and dispute resolution continued even when the states were at war.

4.2 The Suspension Decision and Its Stated Justification

On 24 April 2025, two days after the Pahalgam attack, India formally notified Pakistan of its decision to suspend the Indus Waters Treaty. India appeared to cite two justifications for this decision: a fundamental change in circumstances since the treaty was entered into, and Pakistan's alleged support for cross-border terrorism. Internationalwaterlaw

Prime Minister Modi framed the suspension in unambiguous terms: "India's water will flow for India's benefit, it will be conserved for India's benefit, and it will be used for India's progress," reiterating his longstanding position that "blood and water cannot flow together." Internationalwaterlaw

The deliberate linkage of water management with security politics, expressed in the "blood and water" formulation, represents a fundamental transformation of the Treaty's character: from a technical water-sharing agreement insulated from political relations to a political instrument that can be suspended whenever India decides that its security interests require it.

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4.3 The International Legal Analysis of the Suspension

The legality of India's suspension of the Indus Waters Treaty under international law is not a genuinely contested question among international water law scholars: it is almost universally regarded as a violation of binding international legal obligations.

Article 26 of the Vienna Convention on the Law of Treaties codifies the principle of pacta sunt servanda, requiring that every treaty in force must be adhered to in good faith. Article 60, which deals with termination or suspension due to breach, limits such remedies to cases of material violation, typically a breach going to the heart of the treaty's object and purpose. The IWT's dispute resolution provisions require that disputes not resolved by the Permanent Indus Commission be referred to a Neutral Expert or Court of Arbitration. Bypassing these mechanisms contradicts not only the text of the treaty but also international legal norms on dispute resolution. JURIST

The "fundamental change of circumstances" doctrine, codified in Article 62 of the Vienna Convention, provides extremely narrow grounds for treating a treaty as no longer binding. The doctrine requires that the change of circumstances be fundamental, unforeseen by the parties at the time of conclusion, and that the circumstances were an "essential basis" of the parties' consent. Legal scholars have consistently held that the doctrine cannot be used to escape treaty obligations merely because a state finds compliance inconvenient or believes the other party has violated related obligations in other domains.

India's attempt to use Pakistan's alleged support for terrorism as a basis for suspending a water treaty raises a particularly important legal question: can a state violate a treaty in a specific domain, such as water management, as a response to the other party's alleged violations in a completely different domain, such as terrorism support? The answer under international law is no. The customary international law concept of "counter-measures," which permits a state to temporarily suspend treaty obligations in response to an internationally wrongful act by the other party, requires that the counter-measure be "reversible" and "directed against" the state responsible for the wrongful act, and that it bear "a sufficiently direct nexus to the internationally wrongful act." A suspension of water sharing arrangements in response to terrorism support, even if terrorism support were established, does not meet this nexus requirement: there is no direct connection between water management and the alleged terrorism support.

In its ruling in 2025, a three-judge Permanent Court of Arbitration arbitration panel supported Pakistan on virtually every major issue relating to the Indus Waters Treaty disputes, finding that India's hydropower projects on the Western Rivers had exceeded the design specifications permitted under the Treaty and holding that India must undertake expensive modifications. This ruling, issued in the broader context of the Treaty dispute, established that India's approach to the Western Rivers had already been in technical violation of Treaty requirements, making the subsequent suspension decision even more legally problematic. Courting The Law

4.4 Water, Human Rights, and the Human Security Framework

The suspension of the Indus Waters Treaty is not merely a legal dispute between two states. It is a potential humanitarian catastrophe for the populations of Pakistan who depend on the Western Rivers for their survival. The UN General Assembly Resolution 64/292 of July 2010 recognized the right to safe and clean drinking water and sanitation as a human right essential for the full enjoyment of life. The UN Human Rights Council has subsequently affirmed and elaborated this right in multiple resolutions.

The human right to water is now firmly established in international law. States have obligations, under the ICESCR and customary international law, both not to interfere with others' access to water and to cooperate internationally to realize the right to water for populations outside their territory. India's suspension of the IWT, which threatens the water security of tens of millions of Pakistanis who depend on the Western Rivers for irrigation, drinking water, and economic livelihoods, constitutes a potential violation of India's international human rights obligations with respect to the populations of Pakistan.

This dimension of the analysis is not merely theoretical. The academic literature on the impact of the Indus Waters Treaty suspension published in 2025 and 2026 has emphasized the long-term consequences for Pakistani agriculture and human security. India's move has been described as a "dangerous strategic shift, turning water from a shared resource into a tool of coercion and directly threatening Pakistan's national, human, and environmental security," with the unilateral suspension and expedited approval of upstream projects, including the withholding of hydrological data, diversion of river flows, and alteration of water management, all threatening Pakistan's water security. The Express Tribune

The concept of "hydro-coercion," advanced in the academic literature published in 2025, is analytically precise in describing India's post-Pahalgam water policy. Hydro-coercion is the use of upstream control over water resources as a political weapon, leveraging the downstream state's dependence on shared water to extract political compliance or inflict punishment. It is a form of coercion that disproportionately harms civilian populations, who bear the costs of reduced water availability in their agriculture, their health, and their daily lives, rather than the political and military decision-makers whose conduct is the nominal target of the coercive measure.

The human rights framework has not adequately addressed the specific question of hydro-coercion between states. The emerging literature in 2024 and 2025 on "the human right to water in transboundary contexts," contributed to by scholars at the Max Planck Institute for Comparative Public Law and International Law and in the American Journal of International Law, argues that states with upstream control over shared water resources have positive obligations to cooperate to ensure the realization of the human right to water for downstream populations. This framework, if accepted, would impose on India an obligation not to use its control of the Indus headwaters in ways that threaten the water security of Pakistani civilians.

4.5 The Precedential Significance of the Suspension

The suspension of the Indus Waters Treaty matters beyond India-Pakistan relations because of its implications for the international legal framework governing transboundary water resources globally. The world is entering a period of accelerating water scarcity driven by climate change, population growth, and changing land use patterns. Transboundary water agreements, like the Indus Waters Treaty, are critical instruments for managing that scarcity cooperatively rather than through conflict.

India's decision to treat water as a tool of political coercion, to suspend a sixty-five-year-old treaty that has survived four wars, sets a precedent that other upstream states may seek to follow: if India can suspend the Indus Waters Treaty in response to a terrorist attack, Turkey could suspend cooperative arrangements on the Tigris-Euphrates with Iraq and Syria in response to security concerns, Ethiopia could suspend arrangements with Egypt on the Nile in response to political tensions, and China could use its extraordinary upstream position on multiple Asian rivers as leverage over its neighbors.

The American Society of International Law's 2025 webinar on the IWT suspension brought together international water law experts who consistently expressed alarm at the precedential implications of India's action. The emerging scholarly consensus, reflected in the academic literature of 2025 and 2026, is that the suspension violates the customary international law principle of equitable and reasonable utilization of international watercourses, as codified in the 1997 UN Watercourses Convention, and sets a dangerous precedent for the securitization of shared water resources globally.

CHAPTER FIVE: THE POLITICAL THEOLOGY OF HINDU NATIONALISM AND THE SECURITY STATE

5.1 Hindutva as Political Theology

The concept of "political theology," which Carl Schmitt developed to analyze the relationship between theological concepts and political theory, provides a productive framework for analyzing Hindu nationalism. Schmitt argued that all significant concepts of the modern theory of the state are secularized theological concepts: the omnipotent God becomes the omnipotent state, the miracle becomes the state of exception, and so on. This structural homology between theology and political theory is visible in Hindutva ideology, which draws on specifically Hindu theological categories to construct a political vision that is, in its deep structure, a form of religious nationalism that treats the state as the expression of divine order.

The concept of "Ram Rajya," the reign of the ideal king Rama, which has become a central organizing concept of the BJP's political vision, is explicitly theological in its origins and theological in its political implications. Ram Rajya is not merely a metaphor for good governance: in the Hindu nationalist imagination, it is a specific vision of a divinely ordered society in which the proper relations between communities, including the subordinate status of

minorities, are expressions of cosmic law rather than mere political arrangements. The construction of the Ram Mandir in Ayodhya on the site of the demolished Babri Masjid, which Prime Minister Modi consecrated in January 2024 in a ceremony that blurred the line between religious ritual and state function, was the most concrete expression of this political-theological vision.

The political theology of Hindutva has direct implications for the security state. If India is conceived as a Hindu civilization-state, a dharma-rashtra in the nationalist terminology, then the minorities within it are not fully members of the political community in the constitutional sense. They are tolerated guests or, in the more extreme versions of the ideology, existential threats who have never genuinely accepted the supremacy of the Hindu civilization they inhabit. This conception, when translated into the language of security, produces the logic of the "enemy within" analyzed in Chapter One, and provides the ideological justification for the systematic denial of equal rights to minority communities in the name of protecting the civilization from its internal adversaries.

Partha Chatterjee's analysis of Indian nationalism, developed in "The Nation and Its Fragments" (1993) and subsequent works, is particularly important here. Chatterjee distinguishes between the "outer domain" of nationalism, in which the colonized people assert equality with the colonizers in the material fields of science, technology, economy, and statecraft, and the "inner domain," in which the distinctive cultural and spiritual identity of the nation is preserved against colonial contamination. The inner domain of Hindu nationalism is constituted by a specific construction of Hindu civilization that necessarily subordinates or excludes those whose religious and cultural identity does not fit within it. The outer domain activities of the modern Indian state, its democratic institutions, its legal system, its international diplomacy, are conducted in the idiom of universal rights and secular governance. But the inner domain impulses of the governing ideology systematically undermine those activities by treating the rights of non-Hindus as contingent rather than fundamental.

5.2 The RSS as a Parallel State

The Rashtriya Swayamsevak Sangh, founded in 1925 and functioning as the ideological parent of the BJP and dozens of affiliated organizations, has been described by scholars as a parallel state operating alongside and increasingly through the formal institutions of the Indian government. The RSS's organizational structure, which includes paramilitary branches with training in martial arts and weapons, affiliated organizations for every sector of civil society including student movements, labor unions, tribal welfare groups, media organizations, and educational institutions, and a discipline of ideological formation ("shakha" meetings) that produces cadres committed to the organization's worldview across generations, represents an organizational capacity that the formal state cannot match.

Under the Modi government, the relationship between the RSS/Sangh Parivar and the formal state has shifted from one of parallel operation to one of increasing integration. Key ministries have been populated with individuals drawn from the RSS ecosystem. Educational institutions, including the Indian Council of Historical Research, the National Council of Educational Research and Training, and multiple universities, have been placed under the control of RSS-

affiliated scholars whose appointment criteria include ideological alignment rather than academic distinction. The media environment has been transformed through the acquisition of major outlets by RSS-sympathetic business interests and through the selective treatment of media organizations by government regulatory and enforcement agencies.

The human rights implications of this quasi-merger between the RSS organizational network and the formal state are profound. The RSS ideology treats Muslims and Christians as incomplete members of the national community at best and as enemies of the Hindu nation at worst. When the state's policies and practices are shaped by this ideology, through the appointment of ideologically committed officials to key positions, through the selective enforcement of laws against minority communities, and through the explicit endorsement of Sangh Parivar activities by ruling party politicians, the formal neutrality of the state as a protector of all citizens' rights is fundamentally compromised.

The concept of "state capture," developed in the comparative politics literature on post-Soviet transitions, describes the process by which private or partisan actors systematically corrupt state institutions to serve their own interests rather than the public interest. In the Indian context, the RSs's progressive capture of state institutions represents a specific form of state capture in which an organization committed to ethnic majoritarian ideology has progressively taken control of the state apparatus designed to protect universal rights.

5.3 The Securitization of Identity: Muslims as a Permanent Security Category

The securitization theory developed by Ole Waever and Barry Buzan in the Copenhagen School of security studies provides a useful analytical framework for understanding how Muslim identity has been constructed as a security threat in the Hindu nationalist discourse. Securitization refers to the speech act through which an issue is moved from the realm of normal political discussion into the realm of emergency, where it requires extraordinary measures beyond the normal bounds of political procedure.

The securitization of Muslim identity in India has proceeded through a sustained and multidimensional rhetorical campaign. The "Love Jihad" narrative securitizes Muslim men's relationships with Hindu women, constructing them as instruments of a demographic conspiracy rather than as expressions of individual human relationships. The "Rohingya terrorist" narrative securitizes the presence of Rohingya refugees, most of whom fled genocidal violence in Myanmar, by constructing them as a security threat to the Indian state. The "jihadi" discourse that follows any terrorist attack securitizes the entire Muslim community, treating every Muslim as a potential supporter of the violent acts committed by a tiny minority.

The securitization of Muslim identity has consequences that extend beyond rhetoric. Once Muslim identity is treated as a security concern, every interaction between the state and Muslim citizens is inflected by the security logic. Police encounters with Muslim communities are shaped by the assumption of potential threat. Immigration enforcement against Muslim communities proceeds with assumptions that do not apply to non-Muslim communities. The judicial system's treatment of Muslim defendants in security-related cases is influenced by the cultural construction of Muslims as security risks.

The 2025 report of the US Commission on International Religious Freedom on India documented this securitization pattern with particular attention to the use of counterterrorism legislation against Muslim individuals who have no connection to terrorism but whose religious advocacy or community organization is treated as a security concern. The fusion of religious identity with security threat in the governing discourse creates a permanent state of enhanced vulnerability for the entire Muslim community, in which the normal presumption of innocence and equal legal protection are systematically undermined by the securitizing discourse.

CHAPTER SIX: BANGLADESH AFTER HASINA: THE HUMAN RIGHTS CRISIS AT INDIA'S EASTERN BORDER

6.1 The Fall of Sheikh Hasina and Its Implications for India-Bangladesh Relations

The political transformation of Bangladesh that culminated in the resignation and flight of Prime Minister Sheikh Hasina in August 2024, following a popular uprising led substantially by student movements protesting the quota system for government jobs, represented one of the most significant political changes in South Asia in recent years. Hasina's fifteen-year rule, during which she maintained an extraordinarily close relationship with India and used Indian support as a security guarantee for her increasingly authoritarian governance, was replaced by an interim government headed by Nobel laureate Muhammad Yunus.

The change in Bangladeshi government had immediate implications for India-Bangladesh relations. Hasina had been India's preferred partner in Bangladesh: she had maintained the transit arrangement that allowed India to use Bangladeshi territory for transportation to its northeastern states, she had cooperated with Indian security concerns about insurgent movements, and she had broadly aligned Bangladesh's foreign policy with Indian regional interests. In return, India had provided consistent diplomatic support for her government even as it became increasingly repressive, including the suppression of political opposition through arbitrary detention, enforced disappearance, and extrajudicial killing.

The Yunus government represented a different political configuration, one that was more attentive to popular Bangladeshi concerns about the asymmetric nature of the India-Bangladesh relationship and the human rights implications of India's border management practices. The new government's willingness to raise concerns about the conduct of India's Border Security Force, which had been systematically killing Bangladeshi nationals at the India-Bangladesh border, represented a more assertive approach to bilateral relations than Hasina had been willing to adopt.

6.2 Border Killings and the Bangladesh-India Human Rights Crisis

According to reports, India's Border Security Force allegedly killed at least 10 Bangladeshis at the India-Bangladesh border in the first four months of 2025 alone. The BSF has frequently used excessive force along the Bangladeshi border with impunity, targeting both Indian nationals as well as irregular immigrants and cattle traders from Bangladesh. Human Rights Watch

The pattern of BSF killings at the India-Bangladesh border is one of the most persistent and under-analyzed human rights violations in South Asia. The BSF operates under rules of engagement that permit the use of lethal force against individuals who cross the border without authorization, including cattle traders who are engaging in economic activity that, while technically illegal under Indian customs law, is a long-standing local practice in border communities. The organization Human Rights Watch Bangladesh and the organization Odhikar in Bangladesh have documented hundreds of extrajudicial killings by the BSF over the past two decades.

The legal framework applicable to BSF killings is clearly violated. Article 6 of the ICCPR prohibits arbitrary deprivation of life and requires that the use of lethal force by state agents comply with the principles of necessity and proportionality. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which represent authoritative interpretive guidance on the applicable human rights standards, require that lethal force be used only as a last resort when necessary to protect life and that less lethal means be exhausted first.

Cattle trading, even if in violation of customs regulations, is not an offense that justifies the use of lethal force. The BSF's systematic use of lethal force against cattle traders and other individuals who cross the border without authorization, people who pose no threat to the life of BSF personnel or to others, is a systematic violation of the right to life that has been documented for years without accountability.

The accountability gap is maintained by the same mechanisms that protect security forces from accountability in Kashmir: the requirement of prior government sanction for prosecution, the institutional culture of covering up extrajudicial killings as "encounters," and the absence of effective civilian oversight of BSF operations at the border.

The Yunus government's willingness to raise these concerns bilaterally represents an important assertion of Bangladesh's sovereign interest in the protection of its nationals. But India's response has been defensive, treating Bangladeshi concerns as interference in India's security prerogatives rather than as legitimate rights-based claims on behalf of Bangladeshi citizens killed by Indian security forces.

6.3 The Post-Pahalgam Deportation of Bangladeshis

The post-Pahalgam crackdown included a specific dimension directed at Bangladeshis resident in India. The UN Special Procedures experts noted that the crackdown triggered mass expulsions of nearly 1,900 Muslims and Rohingya refugees, actions they said breach international non-refoulement obligations. Journalism Pakistan

The principle of non-refoulement, which prohibits the expulsion of individuals to territories where they face a risk of persecution, is one of the most fundamental principles of international refugee law, codified in Article 33 of the 1951 Refugee Convention and recognized as part of customary international law. India is not a party to the 1951 Refugee Convention, but the non-refoulement principle binds India as a matter of customary international law, and India's

Constitution has been interpreted by the Supreme Court to prohibit the deportation of individuals to territories where they face persecution.

The expulsion of Rohingya refugees from India to Bangladesh represents a particularly clear violation of non-refoulement. The Rohingya are one of the most persecuted communities in the world: they fled genocide in Myanmar and sought refuge in Bangladesh and India. Their deportation to Bangladesh, which is itself struggling with the enormous refugee burden of over a million Rohingya, potentially exposes them to further refoulement toward Myanmar where they face persecution.

The Indian government has consistently refused to recognize Rohingya refugees as having any legal status in India, treating them instead as "illegal immigrants" subject to deportation. This position is incompatible with India's obligations under customary international law, and specifically with the non-refoulement principle. The Supreme Court has issued orders in the Rohingya cases that are deeply unsatisfactory from a human rights perspective, largely deferring to the government's security characterization of the Rohingya presence rather than applying the non-refoulement principle as required by international law.

6.4 The Teesta Impasse and the Water Rights of Bangladesh

The unresolved Teesta River water-sharing dispute, analyzed in Part One, took on new dimensions in the post-Hasina period. The Yunus government, which is not subject to the political dynamics that made Hasina reluctant to press water rights concerns against India, has indicated a greater willingness to pursue Bangladesh's water rights claims, including through international legal mechanisms.

The Teesta River originates in Sikkim, flows through West Bengal, and enters Bangladesh where it irrigates much of the north-central region of the country. During the dry season, the Teesta's flow is reduced to a trickle by upstream diversions and storage in India, creating agricultural and drinking water crises in the northern Bangladesh districts through which it flows. A water-sharing agreement that has been under negotiation for decades was blocked by West Bengal Chief Minister Mamata Banerjee in 2011 and has remained unsigned despite multiple rounds of negotiation.

The legal framework applicable to the Teesta dispute includes the 1997 UN Watercourses Convention, which India has not ratified but which reflects customary international water law, and customary international law principles of equitable and reasonable utilization and the duty not to cause significant harm to other watercourse states. The systematic reduction of the Teesta's dry-season flow to levels that cause "significant harm" to Bangladesh's agriculture and water security violates India's obligations under customary international water law.

The political economy of the Teesta dispute reveals the intersection between India's federal structure and its international obligations. The water sharing arrangement that international law requires is blocked not by the central government's position but by a state government's political calculations. The West Bengal government's refusal to consent to the Teesta agreement reflects domestic political concerns about water availability for West Bengal's own agriculture. But this

domestic political concern cannot excuse India's violation of its international obligations: the federal structure does not provide a defense against breach of international treaty obligations.

CHAPTER SEVEN: THE NATIONAL HUMAN RIGHTS COMMISSION AND THE FAILURE OF DOMESTIC ACCOUNTABILITY

7.1 The Architecture of Domestic Accountability: What It Should Do

The Paris Principles on National Human Rights Institutions, adopted by the UN General Assembly in Resolution 48/134 of 1993, establish the criteria for effective national human rights institutions. These criteria include independence from the government, a broad mandate encompassing all human rights, adequate resources, accessibility to the public, cooperation with international human rights bodies, and the capacity to receive and investigate complaints.

The National Human Rights Commission of India was established in 1993 under the Protection of Human Rights Act, with a mandate to inquire into complaints of human rights violations, review laws and administrative provisions, undertake research in human rights, and spread human rights literacy. In its early years, the NHRC under the chairmanship of Justice M.N. Venkatachaliah established a reputation for serious engagement with human rights concerns, issuing landmark reports on custodial deaths, torture, and disappearances.

But the NHRC has, over time and with particular acceleration in recent years, become an institution that provides the form of human rights accountability without its substance. It conducts proceedings, issues recommendations, and receives complaints, while the gap between its formal activity and any actual accountability for violations grows ever wider.

7.2 The Downgrading Recommendation and Its Significance

In March 2024, the National Human Rights Commission was recommended for downgrading to "B" status by the Global Alliance of National Human Rights Institutions' accreditation body, due to concerns about its independence, transparency and effectiveness. In May 2024, for a second consecutive year, the United Nations-linked Global Alliance of National Human Rights Institutions deferred accreditation to India's National Human Rights Commission. Amnesty International

This development is of extraordinary significance. The GANHRI, which is the UN-recognized body for assessing the compliance of national human rights institutions with the Paris Principles, had in 2024 and 2025 twice deferred and once recommended downgrading of India's NHRC. A downgrade to "B" status would mean that the NHRC loses its right to participate in UN Human Rights Council sessions and to present reports to UN treaty bodies: it would be formally recognized as a body that does not meet international standards of independence and effectiveness.

The specific concerns about the NHRC include its appointment process, which is dominated by government officials and does not include adequate civil society representation; its failure to investigate complaints against security forces operating under AFSPA and similar legislation; its inadequate engagement with complaints from minority communities; and its consistent failure to follow up effectively on its own recommendations when the government ignores them.

The NHRC's structural limitations reflect a broader pattern in India's domestic accountability framework: the formal existence of oversight institutions that are systematically prevented from exercising genuine oversight. The parliamentary standing committees that should scrutinize security legislation operate under time pressure and with limited access to sensitive information. The Central Bureau of Investigation, which should be an independent investigative authority for serious offenses including corruption and security force abuses, has been widely characterized as having been captured by the executive and used selectively against political opponents and civil society organizations rather than impartially against all offenders.

7.3 Custodial Violence and the NHRC's Documented Failures

Allegations of torture and extrajudicial killings persisted, as the National Human Rights Commission registered 113 deaths in police custody, 1,535 deaths in judicial custody, and 132 alleged extrajudicial killings in the first eight months of 2025 alone. Human Rights Watch

These figures from the NHRC's own registration data represent a fraction of the actual incidence of custodial deaths. The NHRC only registers deaths that are reported to it, and the reporting of custodial deaths is systematically inadequate: police stations routinely fail to report deaths in custody, state governments pressure families not to pursue complaints, and the NHRC's own reach in rural and marginalized communities is limited.

The registered figures are nonetheless staggering. Over 1,500 deaths in judicial custody in eight months represent a rate of judicial custody mortality that is entirely incompatible with India's constitutional guarantee of the right to life. Deaths in judicial custody typically reflect grossly inadequate medical care, violence by prison staff or other inmates in conditions of official tolerance, and the physical toll of overcrowded, insanitary, and inhumane prison conditions. All of these conditions violate the UN Standard Minimum Rules for the Treatment of Prisoners, known as the Mandela Rules, which India has an obligation to implement as a matter of customary international law.

The NHRC's response to these figures is itself indicative of the institution's limitations. The Commission issues notices to state governments, receives responses that deny wrongdoing or attribute deaths to "natural causes," and closes files without the kind of rigorous forensic and investigative follow-up that genuine accountability requires. The institutional culture of the NHRC is oriented toward process rather than outcome: toward the conduct of formal proceedings rather than the achievement of accountability in specific cases.

7.4 The Independence Problem

The appointment process for NHRC leadership is dominated by the government. The Chairperson is typically a retired Chief Justice of India, and the members are typically retired judges and security officials. The dominance of the judiciary and the security establishment in the NHRC's leadership creates structural biases: retired judges are socialized into a culture of judicial deference to the executive in security matters, and retired security officials are unlikely to investigate their former colleagues and institutions aggressively.

The Paris Principles require that national human rights institutions include representatives of civil society, including human rights organizations, in their composition and decision-making. The NHRC's structure does not meet this requirement. Civil society organizations, including those most active in documenting human rights violations, have no formal role in the NHRC's governance or decision-making.

The legislative reform required to bring the NHRC into compliance with the Paris Principles is straightforward in principle: reform the appointment process to include civil society representatives, expand the mandate to include complaints against security forces operating under special powers legislation, provide adequate resources for effective investigation, and create genuine independence from the executive. The political will for such reform is absent under the current government, whose interests are not served by a genuinely effective national human rights institution.

CHAPTER EIGHT: DIGITAL NATIONALISM AND THE WEAPONIZATION OF TECHNOLOGY AGAINST MINORITIES

8.1 The Bulli Bai App and the Weaponization of AI Against Muslim Women

In January 2022, an application called "Bulli Bai" appeared on GitHub, a popular code-hosting platform. The application allowed users to select Muslim women from a list of photographs and "auction" them as if they were property. The women "auctioned" included journalists, activists, academics, and public figures who had been vocal critics of government policy. The application was a deliberate act of coordinated harassment: it sexualized and dehumanized Muslim women in public life, seeking both to silence individual critics and to communicate a broader message of contempt and threat toward Muslim women in Indian civil society.

The "Bulli Bai" application was not an isolated incident. It followed a similar application called "Sulli Deals" that had appeared in 2021. Both applications were created by individuals associated with the Hindu nationalist online ecosystem, and both targeted specific Muslim women who had been publicly critical of the government or who were prominent figures in Muslim civil society.

The creation and circulation of these applications constitutes, in the legal analysis, a violation of multiple rights simultaneously. It violates the right to dignity and privacy guaranteed by Article 21 of the Indian Constitution. It violates the prohibition of discrimination on grounds of religion

and sex under Article 15. It constitutes sexual harassment and, under the Information Technology Act, criminal offense. And it is a form of gender-based violence in the digital sphere that the UN Special Rapporteur on Violence against Women has identified as a major and growing phenomenon requiring specific legal and policy responses.

The state's response to both applications was inadequate. Arrests were made after significant public pressure, but the investigation and prosecution proceeded slowly and with limited transparency. The broader online ecosystem that normalized and facilitated the applications, the Hindu nationalist social media networks that promoted them and treated them as acts of patriotism rather than as criminal harassment, received no serious attention.

The philosophical analysis of the harm done by the "Bulli Bai" application draws on the work of Catharine MacKinnon, whose analysis of pornography as a form of harm to women is directly applicable to this context. MacKinnon argues that pornography, and more broadly the sexualization and objectification of women in public media, is not merely offensive speech protected by free expression: it is a form of discrimination that contributes to the subordinate status of women and enables violence against them. The "Bulli Bai" application sexualized and dehumanized Muslim women in public life as a means of silencing them and asserting Muslim women's subordinate position in Hindu nationalist India's social hierarchy. It is, in MacKinnon's framework, a form of sex discrimination that the state has an obligation to prevent and address.

8.2 The Aadhaar System, Digital Surveillance, and Minority Vulnerability

India's Aadhaar biometric identification system, which assigns a unique twelve-digit identification number to every resident of India and stores their biometric data including fingerprints and iris scans, represents one of the largest biometric databases in the world. Over 1.3 billion Indians have been enrolled in the Aadhaar system. The system was originally designed as a platform for efficient delivery of government welfare benefits, allowing the government to verify beneficiaries' identities and reduce fraud.

But the Aadhaar system has evolved in ways that raise serious concerns about surveillance, privacy, and the specific vulnerabilities of minority communities. The Supreme Court in Puttaswamy v. Union of India (2018), the nine-judge bench privacy judgment, upheld the constitutionality of Aadhaar with important conditions and limitations, while also establishing that privacy is a fundamental right. The court's conditions on Aadhaar use have been progressively circumvented by legislative and administrative actions that have expanded its mandatory application into domains not authorized by the court.

The specific vulnerabilities of Muslim communities in the Aadhaar context are multiple. The linkage of Aadhaar to the National Population Register, which was updated in 2020 as a preparatory step toward a nationwide National Register of Citizens, creates a potential mechanism through which Muslim citizens whose documentation is inadequate, not because they are not citizens but because poor and marginalized communities often lack adequate documentation, could be excluded from the register and stripped of the citizenship rights associated with it.

The combination of the Aadhaar biometric database with the government's expanding digital surveillance infrastructure, including the Central Monitoring System, the NATGRID database of financial transactions, and the growing use of facial recognition technology in public spaces, creates an unprecedented apparatus of surveillance that disproportionately affects communities that are already under security scrutiny. When surveillance systems are deployed by a state that has systematically constructed Muslim identity as a security concern, the neutral technological infrastructure of identification and monitoring becomes a tool of selective targeting.

The jurisprudence of the right to privacy in the digital surveillance context has been developed in the Puttaswamy judgment but has not been adequately applied to the specific vulnerabilities of minority communities. The Court's articulation of the "informational privacy" right, the right to control one's personal data and to be protected against its misuse by the state, creates a constitutional basis for challenging the specific surveillance practices that target Muslim communities. But that challenge has not been pursued with the rigor it demands.

8.3 The Digital Siege of Kashmir: Internet Shutdowns as Systemic Violation

Part One of this textbook introduced the phenomenon of internet shutdowns in Kashmir and established that India is the world's leading practitioner of government-ordered internet shutdowns. Part Seven returns to this issue in the specific context of the post-Pahalgam crackdown to demonstrate that internet shutdowns have become a systematic instrument of collective punishment rather than a targeted security measure.

Following the Pahalgam attack on April 22, 2025, mobile internet services were immediately suspended in Jammu and Kashmir. Thousands of social media accounts were blocked, including those of journalists and independent media outlets. The UN Special Procedures experts noted that these communication blackouts and restrictions on press freedom were part of a broader pattern of repression targeting Muslims and Kashmiris more broadly. Journalism Pakistan

The Anuradha Bhasin judgment of January 2020, which the Supreme Court delivered in response to the 2019 Kashmir internet shutdown, established that internet shutdowns must be proportionate, limited in duration, subject to review, and published in the form of public orders accessible to those affected. These requirements have been systematically ignored in the post-Pahalgam shutdowns, as they were in subsequent shutdowns throughout 2024 and 2025. The government's practice of issuing shutdown orders under administrative authority without publishing them or providing a meaningful opportunity for affected people to challenge them violates both the Court's explicit requirements and the broader right to freedom of expression established in Article 19(1)(a).

The economic analysis of internet shutdowns has been substantially developed in the academic literature of 2024 and 2025. Research published in the Journal of International Economics and in development economics journals has documented the substantial economic costs of internet shutdowns, including reduced economic activity in affected regions, loss of business opportunities, disruption of education, and long-term deterrent effects on investment. For Kashmir, which was just beginning to recover economically from the post-2019 disruptions, the

post-Pahalgam internet shutdown represented a significant additional economic setback visited on a population that was already among the most economically disadvantaged in India.

8.4 The Social Media Surveillance Architecture

The Indian government's surveillance of social media platforms has expanded dramatically under the Modi government, using both legal compulsion of platforms and technical surveillance infrastructure. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021, which replaced the earlier 2011 rules, significantly expanded the government's powers over social media platforms, including requiring platforms to appoint Indian grievance officers, to comply with government takedown requests within seventy-two hours, and to provide traceability information that could identify the originators of specific messages.

The traceability requirement, which was specifically designed to compel platforms like WhatsApp to break their end-to-end encryption in order to identify the "first originator" of specified messages, is the most legally and technically significant provision of the 2021 rules. WhatsApp challenged the rules in the Delhi High Court, arguing that the traceability requirement was incompatible with its end-to-end encryption architecture and with fundamental rights of privacy and free expression. The challenge was pending as of early 2026 without a final resolution.

The use of surveillance against political opponents, journalists, and civil society organizations has been concretely demonstrated by the Pegasus scandal of 2021, in which forensic investigation by the Citizen Lab and Amnesty Tech identified Indian politicians, journalists, and activists as targets of the Pegasus spyware developed by the Israeli firm NSO Group. The Supreme Court appointed a technical committee to investigate the Pegasus allegations in October 2021. The committee's report, submitted to the court in 2022, was not publicly disclosed, and the court's response to it was widely regarded as inadequate.

The use of commercial spyware against journalists and human rights defenders is, in the analysis of international human rights law, a violation of the rights to privacy, freedom of expression, and freedom of association. The UN Special Rapporteur on freedom of opinion and expression has consistently called for a moratorium on the sale and transfer of surveillance technology until adequate human rights safeguards are in place.

CHAPTER NINE: THE ARCHITECTURE OF COLLECTIVE PUNISHMENT: LEGAL, HISTORICAL, AND COMPARATIVE ANALYSIS

9.1 The Historical Development of the Prohibition

The prohibition of collective punishment has deep roots in both religious and secular moral traditions. The Hebrew Bible records Abraham's argument with God against the destruction of Sodom if even ten righteous people could be found there, an implicit acknowledgment that the

punishment of the innocent with the guilty is morally problematic. Greek philosophy's development of the concept of individual moral responsibility laid the philosophical foundations for the modern legal prohibition. Aristotle's insistence, in the Nicomachean Ethics, that moral praise and blame attach to voluntary individual actions rather than to categories of persons is foundational.

The systematic legal prohibition of collective punishment emerged from the laws of war. The Lieber Code of 1863, which governed the conduct of the Union Army in the American Civil War and was the first modern codification of the laws of armed conflict, included provisions limiting collective punishment. The Hague Regulations of 1907, which codified customary laws of war in the context of international armed conflict, explicitly prohibited collective punishment in Article 50. The Fourth Geneva Convention of 1949, responding to the massive collective punishment visited on civilian populations in occupied territories during World War II, codified the prohibition with particular force in Article 33.

The human rights framework has elaborated the prohibition beyond its humanitarian law origins to cover peacetime state conduct. The UN Human Rights Committee, in its General Comment 31, has held that the principle of individual criminal responsibility, the requirement that punishment attach only to persons who are themselves responsible for offenses, is a requirement of Articles 9 and 14 of the ICCPR. The Committee Against Torture has held that collective punishment in the sense of reprisals against communities constitutes cruel, inhuman, or degrading treatment within the meaning of the Convention against Torture.

The specific prohibition of collective punishment as it applies to situations of occupation, which is relevant to Kashmir given the contested character of India's control over the Kashmir Valley, was articulated by the International Court of Justice in the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory Advisory Opinion of 2004. The Court held that Israel's construction of the barrier in the occupied West Bank, which collectively punished Palestinian communities by restricting their movement and access to resources, violated international humanitarian law's prohibition of collective punishment. The parallel with India's conduct in Kashmir, including demolitions of homes, communications blackouts affecting entire populations, and detention operations targeting entire communities, is evident.

9.2 Comparative Analysis: Israel/Palestine and India/Kashmir

The parallel between India's conduct in Kashmir and Israel's conduct in the occupied Palestinian territory has been explicitly drawn by observers including those cited in the post-Pahalgam reporting. The New Humanitarian observed that "the echoes of Israel's occupation of Gaza are hard to ignore. Like Palestinians, Kashmiris now face collective punishment for the actions of a few. Homes destroyed. Movement restricted. Identity criminalised." The New Humanitarian

The comparison is analytically appropriate and legally significant, not because the situations are identical in all respects, but because both situations involve a state with overwhelming military and administrative power subjecting a Muslim-majority population to conditions of systematic control that include elements of collective punishment, restrictions on movement and expression, and impunity for security force violence.

The international community's response to both situations reveals the selective application of human rights principles that is itself a form of structural injustice in the international human rights system. The UN Security Council's inability to take binding action on Kashmir, blocked by India's supporters among the permanent members, parallels its inability to take binding action on Palestine, blocked by the United States. The result in both cases is that the affected populations have access only to the softer instruments of the international human rights system: special procedures mandates, treaty body reviews, and General Assembly resolutions, all of which can be ignored by the states concerned without immediate legal consequences.

The comparative analysis also reveals significant differences that are important to acknowledge. The armed conflict dimension in Kashmir, while real and significant, does not have the same character as the active military conflict in Gaza that has produced mass casualties among civilians. The legal situation regarding statehood and sovereignty is different. And the history of the two situations differs in important ways. But these differences do not eliminate the fundamental comparability of the core pattern: a powerful state subjecting a occupied or controlled minority Muslim population to collective punishment in the name of security, with impunity enabled by the permanent member veto in the Security Council.

9.3 The Doctrine of "Collective Responsibility" in Indian Security Discourse

The Indian security establishment and Hindu nationalist political discourse have developed a form of collective responsibility doctrine that, while never stated in those explicit terms, functions as a justification for collective punishment. The doctrine holds that Muslim communities bear a degree of collective responsibility for the actions of Muslim individuals or groups who engage in terrorism or other violence against the Hindu-majority community or the Indian state.

This doctrine operates through multiple mechanisms. When politicians and media commentators describe terrorist attacks as expressions of "jihad" and treat them as evidence of the Muslim community's fundamentally separatist or violent orientation, they are attributing collective responsibility to the entire community for the actions of a tiny minority. When government officials invoke the Pahalgam attack as justification for cracking down on "illegal Bangladeshis" across India, they are treating the actions of Kashmiri militants as evidence that the Bengali Muslim community is collectively suspect. When BJP-governed state governments deploy bulldozers to demolish Muslim-owned properties in the aftermath of communal violence, regardless of whether the specific property owners were involved in the violence, they are implementing collective responsibility through the mechanism of property destruction.

The philosophical analysis of collective responsibility is a complex and contested field. Larry May's work "Sharing Responsibility" (1992) and "The Morality of Groups" (1987) provides important nuance: May argues that there can be collective moral responsibility that grounds group obligations without implying that every member of the group deserves punishment for the actions of other members. His analysis supports the idea that a community can be asked to collectively examine and reform practices that enable violence while still insisting that individual members do not deserve punishment for those practices.

The Indian state's approach to collective responsibility reverses this logic: it imposes collective punishment while demanding no genuine collective reform. The Muslim community is collectively punished through demolitions, detentions, surveillance, and discrimination, while no corresponding effort is made to reform the structural conditions, including Hindu nationalist violence, police impunity, and economic exclusion, that create the conditions for radicalization.

CHAPTER TEN: THE THEORY OF HUMAN SECURITY VERSUS NATIONAL SECURITY

10.1 The Human Security Framework and Its Challenge to State-Centric Security Doctrine

The concept of human security, introduced in the United Nations Development Programme's Human Development Report of 1994, represents a fundamental challenge to the state-centric conception of security that dominates official discourse in India and most other states. The UNDP report defined human security as freedom from fear and freedom from want: a comprehensive conception of security that places the individual rather than the state at its center and identifies the primary threats to security as poverty, disease, environmental degradation, and political violence, rather than the external military threats that dominate traditional national security discourse.

The human security framework has been extensively developed in the academic literature since 1994. Key contributions include Amartya Sen's work linking human security with freedom and capability, Roland Paris's critical engagement with the concept and its policy implications, and the report of the Commission on Human Security, co-chaired by Sadako Ogata and Amartya Sen and published in 2003, which established human security as a complement to rather than a replacement for state security, arguing that states can only be genuinely secure when their populations are genuinely secure.

The human security framework fundamentally reframes the analysis of India's security state. From the perspective of traditional national security doctrine, the measures India takes in Kashmir, including AFSPA, the Public Safety Act, mass detention operations, and internet shutdowns, are responses to genuine security threats and may be evaluated primarily in terms of their effectiveness in suppressing those threats. From the perspective of human security, these measures are themselves generators of insecurity for the Kashmiri population: they create fear, restrict freedom, undermine livelihoods, and establish conditions of uncertainty and vulnerability that are precisely the conditions human security seeks to eliminate.

The human security perspective also reveals the contradiction at the heart of India's security doctrine in Kashmir and in its minority policy more broadly. The state claims to be protecting security, but its actions systematically undermine the security of the populations they are supposed to protect. The post-Pahalgam crackdown did not make Muslims in India more secure: it made them dramatically less secure, exposing them to vigilante violence, discriminatory state action, economic disruption, and the pervasive fear that comes from being constructed as collectively suspect.

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10.2 Sen's Capability Approach and the Security-Development Nexus

Amartya Sen's capability approach, which evaluates well-being not in terms of income or utility but in terms of people's actual capabilities to lead lives of genuine human flourishing, provides an important framework for analyzing the relationship between security and development in the Indian context. Sen's work, particularly "Development as Freedom" (1999) and his contributions to the human security literature, establishes that genuine security is inseparable from the freedom and capability dimensions of human development.

When applied to India's minority communities, the capability approach reveals that the security state's measures systematically undermine the capabilities of the populations they ostensibly protect. The internet shutdown in Kashmir reduces Kashmiri people's capability to access information, to communicate with others, to pursue economic activities that depend on digital connectivity, and to participate in public debate. The systematic demolition of Muslim-owned properties and businesses, as collective punishment for terrorist attacks and communal violence, reduces the economic capabilities of Muslim communities. The UAPA detention of human rights defenders for years without trial destroys their capability to do the work of human rights advocacy that would, if allowed, contribute to the reduction of violations.

The capability approach also provides a framework for understanding what genuine security policy would look like. Genuine security for Kashmiri people would involve the expansion of their capabilities: the improvement of economic opportunities, the strengthening of educational institutions, the protection of their freedom of expression and political participation, and the building of institutions through which they could address legitimate grievances without resorting to violence. These are precisely the capabilities that the security state's exceptional regime systematically undermines.

10.3 The Critical Security Studies Critique

Critical security studies, associated with scholars including Ken Booth, Richard Wyn Jones, and Ole Waever, has developed the most sustained academic challenge to the state-centric security paradigm. Booth's foundational work "Theory of World Security" (2007) argues that security must be reconceived as emancipation: the freeing of people from constraints that prevent them from living flourishing human lives. In this framework, security is not the absence of external military threats to the state; it is the presence of the conditions in which people can exercise their freedom and develop their capabilities.

Booth's emancipatory security theory, when applied to India, generates a devastating critique. The Indian state's security apparatus, far from providing security in the emancipatory sense, is one of the primary constraints on the freedom and capability of Kashmiri people, of Dalit communities, of Muslim minorities, and of Adivasi communities in conflict zones. The AFSPA, the UAPA, the PSA, the internet shutdowns, the demolitions, the discriminatory immigration enforcement: all of these are constraints that prevent people from living flourishing human lives in precisely the way that Booth's framework identifies as antithetical to genuine security.

The critical security studies literature also emphasizes what Booth calls "security communities," the idea that genuine security is achieved not through the domination of adversaries but through the creation of communities in which the possibility of armed conflict has been eliminated by mutual trust, shared identity, and functioning international institutions. The India-Pakistan relationship, with its nuclear arsenals, its history of wars and proxy conflicts, and its most recent military clash in May 2025, is the antithesis of a security community. The transformation of the India-Pakistan relationship into something approaching a security community would require precisely the kinds of diplomatic engagement, confidence-building measures, and institution-building that both governments have consistently failed to pursue.

CHAPTER ELEVEN: INDIA-PAKISTAN: TWO NUCLEAR STATES, TWO HUMAN RIGHTS CRISES, AND THE SILENCE OF THE INTERNATIONAL COMMUNITY

11.1 The Structural Conditions of Silence

The analysis of India's human rights violations throughout this textbook has noted, repeatedly, the inadequacy of international accountability. The Security Council cannot act on Kashmir because of the geopolitical interests of its permanent members. The UN Human Rights Council can review India's compliance with its obligations but cannot compel action. The treaty monitoring bodies can issue concluding observations but cannot enforce them. And the major Western powers, which are the most influential members of the international human rights system, maintain their partnerships with India because of India's strategic importance as a counterweight to China, as a large and growing market, and as a democratic ally in a world where democracies are increasingly challenged.

This structural silence has been reinforced by the May 2025 crisis. Despite the Modi administration's deteriorating human rights record, several countries strengthened strategic and economic ties with India. The European Parliament adopted a resolution that raised urgent human rights concerns, but this was a non-binding gesture that had no observable effect on European governments' bilateral relations with India. Human Rights Watch

The Operation Sindoor episode illustrates the specific form that Western silence takes in the face of India's security state activities. The United States, through Secretary of State Marco Rubio, "reaffirmed the U.S. commitment to counterterrorism cooperation with India" while encouraging "India to work with Pakistan to de-escalate." This response, which treated the crisis primarily as a counterterrorism matter rather than as a human rights crisis requiring principled response, reflects the hierarchy of concerns in US policy toward India: strategic partnership and counterterrorism cooperation come first, human rights accountability comes last.

11.2 Pakistan's Human Rights Record and the Problem of Symmetry

Any analysis of India's human rights conduct in relation to Pakistan must acknowledge that Pakistan's own human rights record is deeply problematic. Pakistan's treatment of its Baloch and Pashtun minorities, its use of the military and intelligence services to suppress political

opposition, its blasphemy laws that expose religious minorities to vigilante violence, its systematic restriction of press freedom, and its support for designated terrorist organizations all represent serious human rights violations that the international community has insufficiently addressed.

The ICCT report on Operation Sindoor noted, with appropriate balance: "Human rights violations are being committed on both sides of the Line of Control. In both Indian- and Pakistan-administered Kashmir, in particular, anti-terrorism laws are being misused and continue to marginalise minorities and stifle political dissent." ICCT

This acknowledgment of Pakistan's violations does not diminish the force of the critique of India's violations, but it does require a more nuanced analysis of the international human rights implications of the India-Pakistan conflict. Both states subject the populations under their administrative control in Kashmir to human rights violations. Both states use anti-terrorism legislation as instruments of political suppression. And both states resist international human rights accountability, though through somewhat different mechanisms.

The principle of "tu quoque" (you also), which the laws of armed conflict explicitly prohibit as a defense, is equally unacceptable as an argument in human rights discourse: Pakistan's violations do not excuse India's violations, and India's violations do not excuse Pakistan's. The appropriate analysis is to examine each state's conduct against applicable international standards independently, without allowing one state's violations to relativize or excuse the other's.

11.3 The Nuclear Dimension and the Responsibility to Protect

The nuclear dimension of the India-Pakistan relationship creates specific human rights obligations that go beyond the standard framework of state-to-state human rights analysis. Both India and Pakistan have nuclear weapons. Both have articulated nuclear doctrines that involve the potential first or second use of nuclear weapons in the context of military conflict. The populations of South Asia, numbering over 1.5 billion people, live under the shadow of a nuclear exchange whose consequences would be catastrophic.

The human rights implications of nuclear deterrence have been analyzed by scholars including Hugh Gusterson in "Nuclear Rites" (1996) and by the International Campaign to Abolish Nuclear Weapons, whose arguments contributed to the adoption of the Treaty on the Prohibition of Nuclear Weapons in 2017. ICAN's analysis holds that the very existence of nuclear weapons violates the right to life and the right to live free from fear, because nuclear deterrence works by threatening to kill millions of civilians and because the possibility of nuclear exchange imposes a continuous condition of existential threat on populations throughout the world.

Neither India nor Pakistan has ratified the TPNW. Both have explicitly rejected it. But the human rights analysis of their nuclear doctrines is not dependent on treaty ratification: the customary international law prohibition of attacks on civilians, which is non-derogable and applies in all circumstances, is violated by any nuclear doctrine that contemplates the use of nuclear weapons against civilian populations.

The Responsibility to Protect principle, adopted at the 2005 World Summit, creates a duty for the international community to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity when their own state fails to do so. The question of whether R2P obligations are engaged by the nuclear threat is not established in current doctrine, but the development of international law in this direction would represent an important expansion of the principle's protective scope.

CHAPTER TWELVE: THE JURISPRUDENCE OF EMERGENCY AND THE PERMANENT STATE OF EXCEPTION IN 2025

12.1 Agamben in Kashmir: The Camp as Paradigm

Giorgio Agamben's theoretical framework of the "camp" as the paradigmatic institution of the modern state of exception takes on particular resonance when applied to the detention facilities established in Assam for those designated as "illegal migrants" under the National Register of Citizens process. These facilities, formally known as "Detention Centres" or "Foreigners' Detention Centres," hold individuals in indefinite administrative detention without criminal conviction, in conditions that multiple official and non-official reports have described as substandard.

Agamben's analysis of the camp as a space in which "bare life" is exposed to sovereign power without the mediation of legal rights is directly applicable. The individuals held in these facilities are neither citizens in the legal sense nor recognized foreign nationals entitled to consular protection: they are in a legal void, their status contested, their future uncertain, and their access to legal remedies severely limited by the complexity of the foreigners' tribunal system and the inadequacy of legal aid.

The specific legal situation of the Assam detention center residents is complex and has been analyzed in detail by scholars at the Citizen and Refugee Rights organization and by academics including Anupama Roy, whose work on citizenship and migration in India is foundational in this field. Roy's analysis emphasizes that many of those in detention centers are not "illegal immigrants" in any meaningful sense: they are long-term residents of Assam, often with relatives who are accepted as citizens, who have failed to produce the specific documentation required by the foreigners' tribunals because such documentation was never created or has been lost. The documentation requirements have been applied in ways that reflect the linguistic and cultural unfamiliarity of tribunal members with the lived reality of poor communities in rural Assam, where the formal documentation systems that the tribunals treat as decisive were never systematically available.

12.2 The National Security Act and Preventive Detention: A Jurisprudential Analysis

The National Security Act of 1980, which authorizes preventive detention for up to twelve months (extendable) without charge or trial, on grounds that include "acting in any manner prejudicial to the security of the State or the maintenance of public order," is a prime example of

the permanent state of exception operating through ordinary-seeming legislation rather than formal constitutional emergency declaration.

The jurisprudence of preventive detention in India has oscillated between periods of relative judicial assertiveness and periods of judicial deference. The Supreme Court in A.K. Roy v. Union of India (1982) upheld the National Security Act while simultaneously expressing concern about its potential for abuse. Subsequent decisions have provided some procedural safeguards, including requirements of communication of grounds for detention and access to legal representation before the Advisory Board that reviews detention. But the substantive standard for detention, the extremely broad "prejudicial to the security of the State" language, has not been given a sufficiently restrictive judicial interpretation to prevent systematic abuse.

The Human Rights Committee's General Comment 35 on liberty and security of person, adopted in 2014, provides the most current authoritative interpretation of Article 9 of the ICCPR. The Comment requires that "the definition of 'public emergency' and the criteria for 'necessity' and 'proportionality' must be strictly construed." It insists that "states parties must provide strict judicial control of preventive detention" and that "prolonged preventive detention without charge or trial may amount to cruel, inhuman or degrading treatment." The National Security Act, which allows up to twelve months of preventive detention with Advisory Board review (which is not a court and does not provide the safeguards of a judicial hearing), does not comply with these requirements.

12.3 The Sedition Replacement and the Continuity of Repression

The repeal of the colonial-era Section 124A of the Indian Penal Code (sedition) in 2023, as part of the replacement of the IPC with the Bharatiya Nyaya Sanhita, was accompanied by considerable official rhetoric about decolonization and the removal of outdated laws. But the critical analysis of what actually happened reveals a continuity rather than a break.

Section 152 of the Bharatiya Nyaya Sanhita, which replaced Section 124A, prohibits "acts endangering sovereignty, unity and integrity of India," a formulation that is if anything broader than the original sedition provision. The section criminalizes "exciting or attempting to excite secession, armed rebellion or subversive activities" or "encouraging feelings of separatist activities." The vagueness of "subversive activities" and "separatist activities" is at least as great as the vagueness of "disaffection" in the original sedition provision. The application of the new section to suppress journalistic and academic criticism of government policy, which was the primary abuse of the original sedition provision, is entirely possible under the new formulation.

The broader pattern of the criminal law "reform" represented by the three new criminal codes, the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam, has been analyzed in Part Five of this textbook and need not be repeated in full here. The essential point is that these laws represent a relabeling rather than a genuine reform: colonial-era provisions have been translated, with modifications that in some cases strengthen rather than weaken the potential for repression, into the new codes. The architecture of the permanent exception has been recoded rather than dismantled.

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CHAPTER THIRTEEN: THE POLITICS OF DEPORTATION: ROHINGYA, BENGALI MUSLIMS, AND THE POLITICS OF STATELESSNESS

13.1 The Rohingya Crisis and India's Obligations

The Rohingya are among the most persecuted communities in the world. Over one million Rohingya fled Myanmar following the military's genocidal campaign, which the UN Fact-Finding Mission in 2018 found constituted genocide, crimes against humanity, and war crimes. Most Rohingya sought refuge in Bangladesh, which now hosts over one million refugees in conditions of severe overcrowding and inadequate resources. A smaller number, estimated at between forty and sixty thousand, sought refuge in India.

India's legal position on the Rohingya is that they are illegal immigrants who must be deported to Myanmar. This position is incompatible with international law. While India is not a party to the 1951 Refugee Convention, it is bound by the customary international law principle of non-refoulement, which prohibits deportation to territories where individuals face a risk of persecution. Myanmar, which committed genocide against the Rohingya, is precisely such a territory.

The Supreme Court, in Md. Salimullah v. Union of India, which has been before the Court since 2017, has failed to provide adequate protection to the Rohingya against deportation. The Court has largely deferred to the government's security characterization of the Rohingya, which treats them as a terrorism risk, rather than applying the non-refoulement principle as international law requires.

The post-Pahalgam expulsions of Rohingya from India to Bangladesh, documented by the UN Special Procedures and described as a violation of non-refoulement obligations, represent the most direct recent violation of this framework. The expulsion of individuals who fled genocide in Myanmar to Bangladesh, where they face the risk of onward refoulement to Myanmar, constitutes a chain of refoulement that violates international law at each link.

13.2 Bengali Muslims and the Construction of the "Infiltrator"

The construction of Bengali Muslims as "infiltrators" from Bangladesh is a decades-long project of the Hindu nationalist movement in India, with its deepest roots in Assam where the demographic and political implications of Bengali Muslim presence have been most intensely contested. The NRC process in Assam, which concluded in 2019 with the exclusion of approximately 1.9 million people from the citizens' register, was the most concrete recent expression of this project.

The political economy of the "infiltrator" discourse is complex. It combines genuine concerns about unauthorized migration, which is a real phenomenon with real administrative and economic implications, with systematic exaggeration of the scale of the problem and deliberate conflation of illegal migration with Muslim identity. The result is a political discourse in which

Bengali Muslim identity is itself treated as presumptively linked to illegal status, requiring constant proof of belonging that is not demanded of other communities.

The human rights implications of this discourse are severe. Indian citizens who are Bengali-speaking Muslims are subject to forms of scrutiny and suspicion that other citizens are not. They are more likely to be targeted in NRC-related investigations. They are more vulnerable to the kind of arbitrary detention that has characterized the post-Pahalgam crackdown. And they live under the constant threat that their citizenship status could be questioned, regardless of how long their families have been in India, because the discourse of infiltration has created a presumption of illegality that attaches to their community identity.

The jurisprudential concept of "citizenship anxiety," which legal scholars including Anupama Roy have developed to describe the specific form of vulnerability experienced by communities whose belonging to the national community is systematically questioned, is highly relevant to the situation of Bengali Muslims in India. Citizenship anxiety is not merely an emotional state: it describes a structural condition in which access to rights, benefits, and protections is made contingent on a form of proof that is practically difficult to obtain and that is interpreted by authorities in ways that reflect cultural and political biases against the community in question.

13.3 The International Law of Statelessness and India's Obligations

The international legal framework governing statelessness is established in the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. India is not a party to either Convention. This non-ratification is itself a significant gap in India's engagement with the international legal framework on statelessness, and is particularly significant given the scale of the statelessness risk created by the NRC process in Assam.

The exclusion of individuals from the NRC without adequate grounds does not automatically create statelessness, because those excluded may retain Indian citizenship even without NRC inclusion. But the combination of NRC exclusion with the Citizenship Amendment Act, which provides a path to citizenship for non-Muslim excluded persons while denying it to Muslims, creates a risk of de facto statelessness for Muslims excluded from the NRC without any alternative legal status.

The UN High Commissioner for Refugees has consistently expressed concern about the NRC process and its implications for statelessness. The UNHCR's guidelines on statelessness, developed under the authority of its mandate extended by the General Assembly, apply to the Indian situation and require that states take measures to ensure that individuals are not rendered stateless as a result of administrative processes that lack adequate procedural safeguards.

The human rights of stateless or near-stateless persons are severely compromised. Without a nationality, individuals cannot easily access social services, employment, education, or financial services. They cannot travel freely, cannot vote, and cannot access diplomatic protection. The construction of a category of Muslims who are effectively second-class citizens, denied the full protections of citizenship through NRC exclusion and CAA ineligibility, represents the creation

of a de facto stateless population within the borders of a state that formally claims to protect all citizens' rights equally.

CHAPTER FOURTEEN: THE PHILOSOPHICAL EXAMINATION OF SECURITY, FEAR, AND THE SUSPENSION OF RIGHTS

14.1 The Politics of Fear and Its Manipulation

The phenomenology of fear is central to understanding the security state and its human rights implications. Fear is a natural human response to genuine threats. But fear can also be manufactured, amplified, and directed for political purposes, creating a climate in which the suspension of rights seems not merely permissible but necessary. The political philosopher Corey Robin, in "Fear: The History of a Political Idea" (2004), traces the political uses of fear from Hobbes's construction of the social contract as a response to the universal fear of violent death through to the contemporary uses of the "war on terror" to justify exceptional security measures.

In India, the political manipulation of fear operates through specific mechanisms. The construction of Muslims as an existential threat to Hindu civilization, analyzed in Chapter Five, relies on the deliberate cultivation of fear: of demographic replacement, of cultural contamination, of jihadist violence, and of separatist conspiracy. This manufactured fear provides the emotional basis for the support of exceptional measures: when people genuinely believe they are under existential threat from an internal enemy, they are willing to accept the suspension of the enemy's rights as a necessary protective measure.

Martha Nussbaum's analysis of fear and political manipulation in "The Monarchy of Fear" (2018), written in the context of American politics but directly applicable to India, distinguishes between fear as a reasonable response to genuine threats and fear as a projective emotion that attributes threatening agency to groups who do not genuinely pose the threat attributed to them. Nussbaum argues that the politics of fear invariably involves the latter: the manipulation of anxiety about genuine uncertainties and vulnerabilities by directing those anxieties toward specific target groups whose actual threat is greatly exaggerated.

The post-Pahalgam climate in India illustrates Nussbaum's analysis precisely. The genuine fear and grief generated by the terrorist attack was real and legitimate. But the political response to it redirected that fear from the specific perpetrators and their organizational networks to the Muslim community as a whole: from the targeted and difficult security work of investigating terrorist networks to the much simpler and politically rewarding work of collectively punishing Muslim communities. This redirection of fear from its genuine source to a convenient target is the mechanism through which collective punishment is legitimized in the public imagination.

14.2 The Ontological Security Threat and Its Consequences

The sociologist Anthony Giddens, in "The Consequences of Modernity" (1990) and "Modernity and Self-Identity" (1991), developed the concept of "ontological security": the basic confidence in the continuity and stability of the world that allows individuals and communities to function effectively and to maintain a stable sense of identity. Giddens argues that this ontological security is constantly threatened by the reflexive uncertainties of modern life, and that its protection requires the maintenance of "basic trust" relationships and the management of existential questions that cannot be definitively answered.

The application of this framework to the situation of Indian Muslims in 2025 reveals a profound ontological security crisis. The post-Pahalgam crackdown, coming on top of years of CAA-NPR anxiety, NRC threats, anti-Muslim discrimination, demolition campaigns, and mob violence, has created conditions in which Indian Muslims cannot maintain the basic confidence in the continuity and stability of their social world that ontological security requires. The constant possibility that their home could be demolished, that they could be designated as "illegal immigrants," that they could be subjected to communal violence with state complicity, and that their protests could be treated as terrorism, creates a pervasive existential vulnerability that is incompatible with the flourishing human life that human rights law is designed to protect.

This ontological security crisis is not merely a psychological or sociological observation. It is a human rights violation: it violates the right to human dignity, the right to live free from fear, and the right to equal protection that are established in the UDHR, the ICCPR, and the Indian Constitution. A state that systematically undermines the ontological security of a minority community through sustained collective punishment and discriminatory governance has violated its human rights obligations regardless of whether any specific detention order, demolition notification, or immigration enforcement action complies with applicable procedural standards.

14.3 Hannah Arendt and the Right to Have Rights

Hannah Arendt's concept of "the right to have rights," developed in "The Origins of Totalitarianism" (1951), provides the most fundamental philosophical framework for analyzing the situation of the most marginalized populations in India's security state. Arendt observed that the stateless persons of the post-World War I period, stripped of their nationality and thrown on the mercy of the international community, were not merely without specific rights: they were without the fundamental belonging to a political community that is the precondition of having any rights at all. The right to have rights, in Arendt's analysis, is the right to belong to a political community in which one's rights can be claimed and enforced.

The Rohingya in India's detention centers, the Bengali Muslims designated as "illegal immigrants" without adequate legal status, the Kashmiris held under the Public Safety Act outside the normal legal order, the Adivasi accused of Maoism under the UAPA whose trial will not take place for years, all represent different variations of the Arendtian condition: people who are technically within a legal system but from whom the effective protection of that system has been withdrawn, leaving them in a condition of rightlessness within the formal structure of a rights-protecting state.

Arendt's insight connects directly to the structural analysis throughout this textbook. The formal existence of constitutional rights does not guarantee their effective protection. The formal citizenship of Indian Muslims does not protect them from collective punishment. The formal legal status of Rohingya refugees in India does not protect them from deportation. The formal constitutional provisions prohibiting torture do not protect detainees from custodial violence. In each of these cases, the gap between formal rights and effective protection reflects a deeper failure: the failure to create the political community, the mutual recognition of equal membership, that Arendt identifies as the precondition of rights having any real meaning.

CHAPTER FIFTEEN: SYNTHESIS: NATIONAL SECURITY, HUMAN RIGHTS, AND THE FUTURE OF ACCOUNTABILITY

15.1 The Incoherence of the Current Settlement

The analysis throughout Part Seven has demonstrated that India's current approach to national security is incoherent from the perspective of genuine security understood in its broadest, human sense. The security state apparatus, including AFSPA, the UAPA, the PSA, internet shutdowns, mass detention operations, collective punishment, and the weaponization of water, does not make India's people more secure. It makes specific populations dramatically less secure: Kashmiris subjected to collective punishment, Muslims facing communal violence and discriminatory state action, Adivasis caught between security forces and Maoist groups, Rohingya and Bengali Muslims subjected to arbitrary detention and deportation.

The genuine security interests of the Indian state, including the protection of its citizens from terrorist violence, the management of disputed borders, and the maintenance of internal stability, are not served by the security state apparatus in its current form. Terrorism in Kashmir has not been eliminated by decades of AFSPA: it has persisted, with occasional ebbs and flows, precisely because the political grievances that generate support for armed groups have not been addressed. The militarization of the India-Pakistan relationship has not prevented crises: it has made them more dangerous and more costly, culminating in the nuclear-shadowed military conflict of May 2025.

The philosophical incoherence of the security state's approach can be stated simply: it seeks security through the creation of insecurity for the populations it governs, and seeks stability through the suppression of the political processes through which genuine stability can only be achieved. The emancipatory security theory of Ken Booth and the human security framework of the 1994 UNDP report both point toward the same conclusion: genuine security requires freedom, not the suspension of freedom. It requires development, not displacement. It requires political inclusion, not collective punishment.

15.2 The Requirements of Reform: An Integrated Analysis

The reform agenda indicated by the analysis in Part Seven is complex and multidimensional, but its core requirements can be stated clearly.

The first requirement is the repeal of the AFSPA and the PSA and their replacement with legislation that provides security forces with the powers genuinely necessary for their operations while ensuring full civilian accountability through ordinary criminal courts for any abuses. This reform has been recommended by multiple official committees, by the UN, and by virtually every human rights organization that has examined the situation. The political will for it is the primary obstacle.

The second requirement is the reform of the UAPA to restore genuine bail rights, to impose a time limit on detention before trial, to require independent investigation of charges, and to eliminate the provisions that allow the designation of individuals as terrorists without judicial determination. The UAPA in its current form is incompatible with the presumption of innocence, the right to liberty, and the right to a fair trial guaranteed by the ICCPR.

The third requirement is the abandonment of internet shutdowns as a tool of governance and their replacement with targeted, proportionate, and judicially authorized restrictions on specific content where genuinely necessary, in accordance with the principles articulated in the Anuradha Bhasin judgment.

The fourth requirement is the immediate end to the use of administrative demolitions as collective punishment, in compliance with the Supreme Court's own October 2024 direction. This requires not merely a verbal commitment but the creation of an independent oversight mechanism that can enforce compliance and impose accountability for violations.

The fifth requirement is the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, the ratification of the Optional Protocol to the Convention against Torture, and the ratification of the 1951 Refugee Convention and its Protocol. These ratifications would both signal India's genuine commitment to international human rights standards and create concrete accountability obligations.

The sixth requirement, with respect to regional human rights, is the immediate resumption of the Indus Waters Treaty and the commitment to address disputes through the Treaty's established mechanisms rather than through unilateral suspension. The suspension of the IWT is not a legitimate security measure: it is a violation of international treaty law whose costs are borne overwhelmingly by Pakistani civilians who bear no responsibility for the Pahalgam attack.

The seventh requirement is the establishment of an independent investigative mechanism, under the supervision of the Supreme Court, to investigate all civilian casualties in the conduct of Operation Sindoor and all subsequent military operations, with public reporting of findings and accountability for violations of the laws of armed conflict.

15.3 The International Community's Responsibility

The analysis throughout this textbook has consistently noted the inadequacy of international accountability for India's human rights violations. Part Seven has deepened this analysis by documenting the specific forms of political calculation that lead major powers to maintain partnerships with India despite its deteriorating human rights record.

But the international community's failure is not merely one of political will. It is also a structural failure of the international human rights system, which lacks effective enforcement mechanisms for violations by powerful states. The proposals for structural reform of the international human rights system that would make it more effective, including the strengthening of the treaty monitoring bodies, the expansion of the jurisdiction of the International Criminal Court, and the creation of effective enforcement mechanisms within the UN Human Rights Council, have been resisted by powerful states including India.

The human rights advocacy community has developed sophisticated strategies for using the available tools of the international system more effectively: strategic litigation before domestic courts, engagement with special procedures mandates, mobilization of treaty monitoring bodies, documentation and reporting for public accountability, and the building of coalitions that can create diplomatic and economic pressure. These strategies have achieved significant results in specific cases, including the Supreme Court's engagement with the EEVFAM judgment on fake encounters and the Anuradha Bhasin judgment on internet shutdowns. But they have not produced systemic accountability for the patterns of violation documented throughout this textbook.

The philosopher Thomas Pogge, in "World Poverty and Human Rights" (2002), develops what he calls the "negative duty" of wealthy and powerful states not to impose on vulnerable populations the conditions that produce human rights violations. Applied to the India situation, this analysis would generate obligations for major powers including the United States, the European Union, and other India partners: obligations not to provide diplomatic cover for India's violations, not to sell weapons systems that will be used in operations against civilian populations, and not to maintain "business as usual" partnerships that enable the continuation of systematic violations by signaling that those violations carry no meaningful cost.

15.4 The Philosophical Synthesis: Sovereignty, Security, and the Claims of the Human Person

The analysis throughout Part Seven ultimately returns to the foundational philosophical question that runs through this entire textbook: the relationship between sovereignty, security, and the claims of the human person. The Indian state, like all states, grounds its claims to authority in the consent of the governed and in its capacity to protect the welfare of its people. The security state's justification for its exceptional measures is precisely that those measures are necessary to protect the people from genuine threats.

But the people whose welfare the state claims to protect are not an abstraction. They are Kashmiris detained without trial under the Public Safety Act. They are Bengali Muslims arbitrarily detained as "illegal immigrants" in the aftermath of a terrorist attack with which they have no connection. They are Rohingya refugees expelled to Bangladesh in violation of non-refoulement obligations. They are Pakistani civilians who depend on the Indus Rivers for their survival. They are Kashmiri students harassed in Indian universities. They are Muslim women whose profiles were "auctioned" on applications designed to threaten and silence them.

The philosophical tradition that this textbook has engaged throughout, from Kant's insistence on treating every person as an end in themselves rather than as a means to others' purposes, through Rawls's veil of ignorance, through Nussbaum's capability approach, through Arendt's right to have rights, through Booth's emancipatory security theory, is united in insisting that the claims of the individual human person cannot be overridden by the claims of the state except in the most extreme and genuinely compelling circumstances, and never on the basis of group identity rather than individual action.

India's security state violates this principle systematically. It overrides the claims of individual human persons based on their membership in a community, their geographic location, their religious identity, or their political expression. It does so in the name of security but achieves insecurity. It does so in the name of sovereignty but undermines the legitimacy that genuine sovereignty requires. And it does so in the name of a nation that the Constitution's framers, and particularly Ambedkar, envisioned as a place where every person's dignity would be equally respected, a vision that remains as remote in 2025 as it was when Ambedkar expressed his fear that political democracy without social democracy was a democracy in name only.

The project of this textbook is not merely descriptive: it is normative and political. It describes violations in order to argue for their cessation. It analyzes the philosophical foundations of rights in order to reinforce the claim that those rights are genuine and non-negotiable. It documents the failures of accountability in order to argue for structural reforms that would make accountability possible. And it does all of this in the conviction, which is the foundational conviction of the human rights tradition, that every human person has an inherent dignity that no state, no ideology, and no doctrine of security can legitimately override.

CONCLUDING ANALYSIS OF PART SEVEN: THE SECURITY STATE AND THE CLAIMS OF THE HUMAN PERSON

Part Seven has conducted a comprehensive analysis of the relationship between India's security state apparatus and its human rights obligations, bringing together the theoretical frameworks of the permanent state of exception, the political theology of Hindu nationalism, the human security tradition, and the international law of collective punishment, the use of force, and treaty law to produce a damning account of a state that has systematically failed to reconcile its security concerns with its obligations to the human persons who live under its authority and within the reach of its power.

The events of 2025, particularly the Pahalgam attack, the post-attack crackdown, Operation Sindoor, and the suspension of the Indus Waters Treaty, represent a concentrated and dramatized expression of tendencies that have been building throughout the Modi years. They demonstrate, in particularly stark form, the consequences of a decade of constructing Muslim identity as a security threat, of building a legal and institutional infrastructure of permanent exception, and of privileging state security over human security.

The Pahalgam attack itself was a genuine and horrible terrorist act. The grief and anger of the families of the victims is completely understandable. The security state's failure is not in responding to the attack but in the nature of the response: collective punishment for tens of thousands of Kashmiri individuals who had nothing to do with the attack, nationwide harassment of Muslim communities for the actions of a tiny minority with no established connection to them, and the weaponization of India's upstream water control to threaten the survival of tens of millions of Pakistani civilians.

The Operation Sindoor episode raised profound questions about the international law of the use of force that remain unresolved in the absence of any independent judicial review. The Indus Waters Treaty suspension represented the most dramatic weaponization of shared water resources in modern South Asian history, setting a precedent that threatens the entire global framework of transboundary water governance.

The digital dimension of India's security state, including the targeted harassment of Muslim women through technology, the comprehensive surveillance apparatus, and the systematic use of internet shutdowns as collective punishment, represents a new frontier in the development of the permanent state of exception: one in which the instruments of modern information technology are deployed to extend the reach and the depth of state control over minority communities.

Against all of this, Part Seven has articulated the philosophical, legal, and political demands of genuine accountability. The repeal of AFSPA and PSA. The reform of the UAPA. The end of internet shutdowns. The cessation of collective punishment demolitions. The ratification of key human rights treaties. The resumption of the Indus Waters Treaty. The independent investigation of Operation Sindoor's civilian impact. And the transformation of the international community's approach to India's violations from complicit silence to principled engagement.

These demands are not expressions of hostility toward India or its people. They are expressions of the conviction, shared by Ambedkar and by every serious participant in the human rights tradition, that the measure of a political community is found not in its formal constitutional commitments or its democratic elections but in the actual treatment of its most vulnerable members. By that measure, the Indian state in 2025 has profoundly failed. The nature of that failure, and the demands of genuine accountability, are what this Part has sought to make visible.

Part Eight will turn to the specific and contested terrain of India's prison system and the jurisprudence of custodial rights, examining the conditions of detention that hundreds of thousands of Indian prisoners experience, the systematic use of torture in interrogation, the failure of the legal framework for prisoners' rights, and the specific conditions of political detainees held under UAPA, AFSPA, and NSA. It will examine the jurisprudence of solitary confinement, the rights of undertrial prisoners, and the relationship between prison conditions and the broader human rights framework. And it will engage with the emerging international literature on the "carceral state" and its relationship to the specific political economy of detention in India.

PART EIGHT: THE CARCERAL STATE, CUSTODIAL VIOLENCE, AND THE JURISPRUDENCE OF IMPRISONMENT IN INDIA

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PREFACE TO PART EIGHT

Part Seven of this textbook concluded with the observation that India's security state apparatus in 2025 represents a concentrated and dramatically visible expression of tendencies that have been building throughout the Modi years. It documented the suspension of rights, the collective punishment of minority communities, the weaponization of shared water resources, and the digital architecture of surveillance and suppression. It called for structural reform across multiple domains and articulated the philosophical and international legal frameworks that make those reforms not merely desirable but legally obligatory.

Part Eight descends into what may be the most intimate and most physical terrain of human rights violation: the prison, the detention center, the police lock-up, the interrogation room. These are the spaces in which the state's claim to sovereign authority becomes most brutally literal, in which the power to confine, to hurt, to humiliate, and to kill finds its most unmediated expression. They are also the spaces that are least visible to the public, most resistant to scrutiny, and most systematically insulated from legal accountability.

The Indian prison system is one of the largest and most troubled in the world. With over five hundred and seventy thousand people in confinement, more than three quarters of them without conviction, operating in facilities that are chronically overcrowded, inadequately staffed, medically neglected, and saturated with caste and religious discrimination, India's prisons represent a systemic and ongoing human rights crisis of extraordinary scale. That crisis is compounded by the specific phenomenon of political detention: the use of preventive detention laws, anti-terrorism statutes, and security legislation to confine journalists, academics, lawyers, activists, students, and human rights defenders for years without trial, in conditions designed to break and silence rather than merely to secure.

This Part engages with all of these dimensions. It examines the historical and colonial foundations of the Indian prison system, the constitutional and legislative framework that governs prisoners' rights, the jurisprudence of custodial violence and torture, the specific situation of undertrial detainees who constitute the overwhelming majority of India's prison population, the conditions and legal position of political prisoners detained under the UAPA and other national security legislation, the intersection of caste and religion with prison conditions, the situation of women and children in prison, the jurisprudence of solitary confinement, the phenomenon of custodial death and the accountability failures that accompany it, and the theoretical framework of the carceral state and its relationship to the broader political economy of exclusion and control in India.

It does this through the lens of multiple theoretical traditions: Michel Foucault's analysis of the prison as a technology of power, Angela Davis's abolitionist critique of the prison-industrial complex, Frantz Fanon's analysis of colonial violence and its institutional perpetuation, the capabilities approach of Martha Nussbaum and Amartya Sen, critical race and caste theory, feminist prison scholarship, and the international jurisprudence of human rights treaty bodies. It

brings these frameworks to bear on the specific, documented, concrete reality of what happens to human beings when the Indian state places them in confinement.

The Global Torture Index 2025, published by the World Organisation Against Torture in collaboration with over two hundred civil society organizations, ranked India as a "high risk" country for torture and ill-treatment, the most severe classification in the Index's framework. That ranking is not a polemical judgment. It is the product of systematic analysis of documented evidence, legal frameworks, institutional patterns, and accountability mechanisms. It is the finding of expert organizations working from the evidence produced by the Indian state's own reporting systems, its own courts, and the testimony of tens of thousands of survivors. This Part examines why that finding is not only justified but, if anything, understated.

The philosophical commitment of this Part, as of this textbook throughout, is to the claim that the treatment of the least powerful, the imprisoned, the disappeared, the tortured, the forgotten, is the truest measure of a legal system's actual values. What the Indian legal system values, in that truest measure, becomes unmistakably clear in its prisons.

CHAPTER ONE: THE HISTORICAL AND COLONIAL ARCHITECTURE OF THE INDIAN PRISON

1.1 Prisons as Colonial Technology: Foucault, Agamben, and the Indian Inheritance

Michel Foucault's "Discipline and Punish: The Birth of the Prison," published in French in 1975 and translated into English in 1977, remains the most influential theoretical analysis of the prison as an institution of power. Foucault's central argument is that the prison, which emerged as the dominant form of punishment in Western societies in the late eighteenth and early nineteenth centuries, is not simply a place of confinement or even punishment: it is a technology of power whose function is the production of "docile bodies," individuals made calculable, controllable, and useful through the exercise of disciplinary techniques including surveillance, normalization, examination, and the timetabling of bodily existence.

Foucault's genealogy of the prison traces the development of disciplinary power from its initial application in specific institutions, the military, the school, the hospital, the workshop, to its generalization throughout society in what he calls the "disciplinary society." The prison, in this analysis, is simultaneously a specific institution of confinement and a model for the diffusion of disciplinary power across the entire social body. It is the paradigmatic disciplinary institution, the clearest expression of the logic of power that shapes modern societies at every level.

When applied to the Indian context, Foucault's analysis requires modification but retains essential relevance. The Indian prison system was not developed independently as a response to internal social needs or philosophical debates about punishment; it was introduced as part of the colonial apparatus of control. The prisons of colonial India were explicitly and unabashedly institutions of social control: they were designed to manage populations that resisted colonial authority, to break the bodies and spirits of political dissidents, to sort and classify colonial

subjects for various purposes of administrative management, and to instill the habits of submission that colonial rule required.

The Andaman Cellular Jail, constructed in 1906 and used until 1938, is the most famous symbol of the colonial prison system in India. The Cellular Jail was designed on the principle of individual cellular confinement: each prisoner was isolated in a separate cell, unable to communicate with other prisoners, subjected to hard labor and systematic physical punishment, and monitored through a panoptic design that gave guards visibility over all cells simultaneously. It was used primarily for Indian political prisoners, including nationalist freedom fighters who were transported to the Andamans for sentences that combined isolation, labor, and physical degradation. The Andaman Cellular Jail, which is now a national memorial, is thus simultaneously a monument to the heroism of the independence movement and a monument to the brutality of colonial confinement.

The cellular architecture of the Andaman Jail was influenced by Jeremy Bentham's panopticon design, which Foucault analyzes as the conceptual ideal of disciplinary surveillance. But in the colonial context, the panoptic principle served not the therapeutic aims that Bentham claimed for it but the nakedly political purpose of destroying the political agency of those who challenged colonial authority. The colonial prison was explicitly an instrument of political repression dressed in the language of penological rationality.

The Prison Acts that governed colonial India, most importantly the Prisons Act of 1894, established the legal framework for prison administration. The 1894 Act remains substantially in force in India today, though nominally superseded by the Model Prisons and Correctional Services Act of 2023. The persistence of an 1894 colonial prison administration statute as the effective governing law for India's contemporary prison system for over a century after independence is not an accident or an oversight: it reflects the continuing relevance of the colonial logic of confinement, the idea that prisoners are objects of administrative management rather than subjects of constitutional rights, to the Indian state's approach to incarceration.

The classification system established by the 1894 Act, which divided prisoners into multiple categories based on class, criminal history, and type of offense, and provided substantially different treatment for different classes of prisoner, incorporated caste logic into prison administration even without explicit reference to caste. The "A class" or "superior class" prisoner, who received better food, clothing, and accommodation, was almost invariably an upper-caste or upper-class individual. The "C class" prisoner, subjected to the worst conditions, was almost invariably from a lower caste or a poor family. The formal classification system thus reproduced the social hierarchy of the outside world in the confined and degrading space of the prison.

1.2 The Post-Independence Continuation: Systematic Neglect as Policy

The transition from colonial rule to independence in 1947 did not produce a transformation of the prison system. The new Indian state inherited the colonial prison apparatus, including its physical infrastructure, its administrative culture, its legal framework, and its approach to prisoners as objects of management rather than as rights-bearing persons. The political energy of

the independence movement, which had generated an articulate and passionate critique of colonial incarceration, was not translated into serious prison reform once independence was achieved.

Several factors explain this failure. First, the framers of the Constitution, despite Ambedkar's insistence on social democracy and not merely political democracy, were primarily concerned with establishing the formal structure of democratic governance, fundamental rights, and federal administration. Prison conditions, while implicitly addressed by the right to life and dignity in Article 21, were not the subject of specific constitutional provision. The Directive Principles of State Policy, which are the constitutional home of social and economic aspirations, do not specifically address prison conditions or prisoners' rights.

Second, the political economy of prison reform works against it in any society but especially in one where the prison population is drawn overwhelmingly from the most marginalized communities. Prisoners in India are disproportionately Dalit, Muslim, tribal, poor, uneducated, and lacking in political representation or voice. They have no constituency in the conventional sense. The political incentive to improve prison conditions is weak because the people who experience those conditions are precisely the people who have least influence in the political system.

Third, the colonial administrative culture that shaped the Indian prison service emphasized security and order above all other values. The prison officers who administered the system after independence were, in many cases, the same individuals who had administered it before independence, shaped by an institutional culture of control and hierarchy that regarded prisoner welfare as a secondary concern at best and an obstacle to order management at worst. The institutional socialization of prison staff into this culture has proved remarkably durable, reproducing itself across generations of prison officers despite the formal constitutional and legislative changes that theoretically required a different approach.

The result is a prison system that, as of 2025 and 2026, looks in its essential character remarkably like the colonial prison system that preceded it: overcrowded, violent, indifferent to the welfare of those it confines, resistant to external scrutiny and accountability, saturated with the social hierarchies of caste and religion, and systematically more brutal toward those at the bottom of the social order than toward those who enjoy social privilege.

1.3 The Legal Framework: Prisons as Subject of State List

One of the structural features of the Indian federal system that contributes to the difficulty of prison reform is the allocation of "prisons" to the State List (List II) of the Seventh Schedule to the Constitution. This means that prisons are a state subject: the central government has no direct legislative authority over prison administration, and prison conditions vary enormously from state to state. The result is a fragmented system of prison governance in which the quality of treatment a prisoner receives depends heavily on which state they happen to be imprisoned in.

The Supreme Court has attempted to overcome this fragmentation through its supervisory jurisdiction and public interest litigation. In Sunil Batra v. Delhi Administration (1978), the

Court established that prisoners are not wholly without constitutional rights and that the state has obligations toward those it incarcerates under Article 21. The Court introduced a remarkable innovation: letters from prisoners complaining of mistreatment could be treated as writ petitions, allowing the Court to exercise its jurisdiction in response to complaints that might otherwise never reach it due to the practical barriers facing prisoners seeking access to the legal system.

In Sheela Barse v. State of Maharashtra (1983), the Court addressed the specific conditions faced by women in police custody, directing that women should not be arrested without female police officers present and that they should be separately lodged in police stations. In Charles Sobraj v. Superintendent Central Jail (1978), the Court held that solitary confinement is not a permissible method of prison punishment without specific court authorization. These and many other Supreme Court decisions have constructed an impressive edifice of prisoners' rights jurisprudence that exists, however, in an extremely uncomfortable relationship with the reality of what actually happens in Indian prisons.

The National Model Prisons and Correctional Services Act, 2023 represents the most recent attempt to create a modern legislative framework for prison administration. The Act, which is a model legislation recommended to states for adoption rather than a central law binding on states, introduces the concept of "correctional services" in place of mere custody, emphasizes rehabilitation and reformation, provides for the rights of prisoners including the right to communication with family and legal counsel, and mandates the establishment of grievance redressal mechanisms. These are genuinely progressive provisions that, if implemented, would represent a significant improvement over the colonial-era Prisons Act.

But the critical question is implementation. The Prisons Act of 1894 also contained provisions for prisoner welfare that were systematically ignored. The Supreme Court's directions in dozens of cases have been systematically ignored. The Model Act, while a useful legislative template, will achieve nothing if the political will to implement it, the resources to support implementation, and the accountability mechanisms to enforce compliance are not in place. The history of prison reform in India is a history of impressive paper commitments combined with comprehensive practical failure.

1.4 The Demographic Architecture of Incarceration: Who India Imprisons

The demographic profile of India's prison population is among the most telling indices of the country's deeper social inequalities. The National Crime Records Bureau's prison statistics, the most comprehensive official data source on prison demographics, consistently reveal that the prison population disproportionately represents India's most marginalized communities: Dalits, Adivasis, Muslims, and the poor.

The NCRB's Prison Statistics India 2022, the most recent comprehensive dataset as of 2025, recorded a total prison population of 573,220 individuals across all Indian prisons. Of these, a remarkable 434,302, representing 75.8 percent of the total, were undertrial detainees: individuals who had not been convicted of any crime and were legally presumed innocent. India's prisons thus confine more than three quarters of their population in a condition of legal innocence, making them institutions of pre-conviction punishment rather than post-conviction consequence.

The religious and caste composition of the undertrial population is deeply revealing. Muslims, who constitute approximately 14-15 percent of India's total population, account for approximately 21 percent of the undertrial population. Scheduled Castes, constituting approximately 16 percent of the total population, make up approximately 21 percent of the convicted prison population. Scheduled Tribes, approximately 8-9 percent of the total population, constitute a disproportionate share of the prison population in states where counterinsurgency operations are conducted. The structural overrepresentation of Muslims, Dalits, and Adivasis in the prison population reflects, in concentrated form, the structural discrimination of the broader society: the more marginalized a group is in the external social order, the more likely its members are to end up in prison, and to stay there longer once imprisoned.

The economic dimension of the undertrial crisis is directly connected to the bail system. Bail in India is typically conditional on financial sureties: the payment of a specified sum, or the provision of a guarantor who can undertake to pay that sum in the event of the accused's non-appearance. For the poor, who constitute the overwhelming majority of undertrial detainees, this financial condition is effectively a mechanism for punishing poverty. A person who cannot produce the financial surety required for bail remains imprisoned not because a court has found them dangerous or a flight risk in any genuine sense, but because they lack the money to secure their freedom.

The 2026 paper on undertrial detention published by the IMPRI Impact and Policy Research Institute provides a striking illustration of this dynamic: a young daily-wage worker from Sopore was detained in 2021 under a minor IPC offense, unable to furnish the financial surety attached to his bail order. His inability to pay the surety meant that he remained in prison, unable to work, unable to support his family, and unable to participate in his own defense in any meaningful way, for a period far exceeding what any realistic sentence for his alleged offense would have involved. His case is not exceptional. It is representative of hundreds of thousands of similar situations across India.

CHAPTER TWO: THE JURISPRUDENCE OF CUSTODIAL VIOLENCE: FROM D.K. BASU TO THE GLOBAL TORTURE INDEX

2.1 The Constitutional Framework Against Custodial Torture: A Gap Between Promise and Reality

The Indian Constitution's prohibition of torture is not explicit in the text but has been constructed through judicial interpretation of multiple fundamental rights provisions. Article 21, which guarantees the right to life and personal liberty, has been interpreted by the Supreme Court to encompass the right to be free from torture and cruel, inhuman, or degrading treatment. Article 20(3), which protects against self-incrimination, is directly relevant to the use of torture to extract confessions. Article 22, which provides specific protections for persons detained and arrested, including the right to legal counsel, and the requirement of production before a magistrate within twenty-four hours, creates procedural

safeguards against arbitrary detention that are systematically violated in the context of custodial torture.

Article 14's equality guarantee is also directly implicated by custodial torture: when state agents subject individuals in their custody to physical violence, they create a profoundly unequal relationship in which the detainee is exposed to harm with no capacity for self-protection, in conditions of complete dependency on the very agents who are perpetrating the harm. This power asymmetry is incompatible with the equal dignity that Article 14 guarantees.

The Supreme Court's landmark judgment in D.K. Basu v. State of West Bengal, decided in 1996, is the foundational text of custodial rights jurisprudence in India. The case arose from a letter written by the Executive Chairman of the Legal Aid Services West Bengal to the Chief Justice of India, drawing attention to news reports of deaths in police custody and seeking judicial intervention. The Court treated the letter as a writ petition and issued a comprehensive set of guidelines designed to prevent custodial torture and death.

The D.K. Basu guidelines are extensive and specific. They require that police officers making an arrest must bear visible, accurate, and clear identification; that an arrest memo must be prepared by the arresting officer and attested by at least one witness; that the person arrested must be informed of their right to have someone informed of their arrest; that a friend, relative, or well-wisher of the arrested person must be informed of the arrest and the place of detention within eight to twelve hours; that the person arrested must be examined for injuries and a report prepared; that the examination must be conducted by a trained medical officer; that the arrested person must be produced before the appropriate magistrate within twenty-four hours; and that the arrested person must be permitted to meet their lawyer during interrogation.

These guidelines, developed in 1996, are in 2025 still systematically violated in police custody across India. Their violation is not the exception but the rule. The National Campaign Against Torture documented, in its annual reports, that the average number of custodial deaths per day in India is approximately five, combining police and judicial custody figures. The National Human Rights Commission reported 2,739 custodial deaths in 2024, following approximately 2,400 cases in 2023. These are not natural deaths resulting from the ordinary risks of imprisonment: they include deaths resulting from beatings, torture, denial of medical care, and various forms of physical and psychological abuse that the D.K. Basu guidelines were specifically designed to prevent.

The D.K. Basu guidelines were given statutory force by the Criminal Procedure Code Amendment Act of 2008 and were incorporated into Section 41B of the Code of Criminal Procedure, now reflected in the Bharatiya Nagarik Suraksha Sanhita of 2023. Their formal statutory status has made no discernible difference to their implementation. The gap between the legal requirement and the social reality of police custody in India is so vast, so persistent, and so well-documented that it cannot be explained by ignorance of the law, inadequate resources, or occasional individual misconduct. It can only be explained by a systematic institutional culture that tolerates and in many cases actively encourages custodial violence.

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2.2 The 2025 London High Court Ruling: International Recognition of Endemic Torture

One of the most significant recent developments in the international acknowledgment of India's custodial torture problem came not from a human rights organization or a UN treaty body but from a domestic court in the United Kingdom. In February 2025, the High Court of Justice in London, King's Bench Division, rejected the extradition of Sanjay Bhandari to India on the ground of custodial torture, holding explicitly that custodial torture was "commonplace and endemic" in India and that Bhandari's extradition would constitute a breach of his human rights under the European Convention on Human Rights.

The significance of this ruling extends far beyond the specific extradition case. Sanjay Bhandari is not a marginalized individual: he is an Indian national facing money laundering and tax evasion charges, a person of some social and economic position. The fact that even a court considering the extradition of a relatively privileged individual could conclude that the risk of torture in Indian custody was serious enough to bar extradition speaks volumes about the state of the evidence and the reputation of the Indian prison and police system internationally.

The UK court's finding is consistent with the assessment of every major international human rights organization that has examined India's custodial practices. The OMCT's Global Torture Index 2025 classified India as "high risk," the most severe category in the Index's framework. The Index's analysis identified multiple systemic factors contributing to the high-risk classification: the misuse of national security laws to subject detainees to extended periods in custody without adequate judicial oversight; poor detention conditions that themselves constitute inhuman treatment; the near-complete absence of effective complaints mechanisms for detainees facing torture or ill-treatment; and the systematic impunity of perpetrators, with police officials labeled "encounter specialists" receiving promotions for extrajudicial killings rather than facing prosecution.

The State of Policing in India Report, 2025, prepared by the Common Cause organization and the Centre for the Study of Developing Societies, similarly found that a typical victim of custodial torture is someone accused of a relatively minor offense: not a hardened criminal requiring special management, but an ordinary person who has come into contact with the police through some relatively routine interaction and who has no social protection against the violence the police may choose to inflict. The socioeconomic profile of torture victims confirms the class, caste, and religious dynamics noted in the previous chapter: the poor, the Dalit, the Muslim, and the Adivasi are the most likely targets.

2.3 The Anatomy of Custodial Torture: Methods, Contexts, and Institutional Culture

The methods of custodial torture employed by Indian police and security forces are well-documented in the reports of human rights organizations, judicial findings, and the testimony of survivors. They include: beating with lathis (police batons), leather belts, and other implements; the suspension of the victim from a bar or ceiling; the application of electric shocks to sensitive parts of the body; the forcing of water or other substances into the mouth, nose, and ears; sleep deprivation; prolonged exposure to extreme temperatures; the application of chili powder to the eyes, genitals, or wounds; burning with cigarettes or heated objects; sexual violence and threats

of sexual violence including against family members; and prolonged isolation in conditions of sensory deprivation.

The "stretched position torture," in which the victim is suspended by their wrists with the toes barely touching the ground, causing extreme pain throughout the body, is particularly widely reported in South India. The "third degree" methods, a colonial-era euphemism for severe physical torture during interrogation, are so well-established in Indian police practice that they are openly discussed by serving officers, retired officers, and former prisoners without shame or denial. The casual acknowledgment of torture as an interrogation technique, its normalization within police culture as an acceptable and even efficient method of investigation, is itself one of the most disturbing aspects of the phenomenon.

The institutional culture that supports custodial torture in India can be understood through multiple theoretical frameworks. Goffman's analysis of "total institutions" in "Asylums" (1961) captures something important about the specific dynamics of police stations and prisons: they are closed environments with radical power asymmetries in which the norms of the outside world, including legal prohibitions on violence, are systematically suspended and replaced by the internal norms of the institution. The person who enters a police lock-up enters a space governed by the logic of submission and control rather than by the logic of rights and due process.

Fanon's analysis in "The Wretched of the Earth" is even more directly applicable: Fanon argued that the colonial state maintains its authority through organized violence, particularly in the zones of the colonized population, and that this violence is not a sign of weakness or breakdown but an expression of the fundamental logic of colonial power. The transition from colonial to post-colonial governance did not change this fundamental logic: the police station in a Dalit community or in a Muslim neighborhood or in a conflict-affected area of the northeast continues to function as a site of sovereign violence directed at populations who are deemed to require management rather than governance.

The concept of "institutional habitus" from Pierre Bourdieu's sociology is also relevant. Bourdieu's analysis of how institutions reproduce particular dispositions, perceptions, and practices through the socialization of their members explains how custodial torture can be institutionally perpetuated even in the absence of explicit official endorsement. New police officers are socialized into a culture in which custodial violence is normal, in which seniors who practice it are respected for their effectiveness, in which complainants who report it are treated as troublemakers, and in which the formal legal prohibitions are understood as statements of aspiration rather than actual constraints on conduct. This socialization reproduces the culture of custodial violence across generations of officers without requiring any explicit policy of torture.

2.4 The Torture-Confession-Conviction Pipeline: Evidence Law and Its Failures

Custodial torture in India is directly connected to the evidence law framework that governs criminal prosecutions. Indian courts do not admit confessions made in police custody as evidence against the accused, under Section 25 of the Indian Evidence Act (now Section 22 of the Bharatiya Sakshya Adhiniyam, 2023). This is a strong protection, directly designed to eliminate

the incentive for police to torture confessions out of suspects. But it has not achieved its purpose, for two reasons.

First, police routinely "convert" custodial confessions into confessions before magistrates under Section 164 of the CrPC (now Section 183 of the BNSS). The procedure requires that the magistrate ensure the confession is voluntary, warn the accused of their right to refuse, and inquire specifically about whether they have been subjected to police pressure or violence. But in practice, these procedural safeguards frequently fail. Accused persons who have been subjected to torture in police custody often continue to be under the effective control of the police when they appear before the magistrate: they may be brought directly from police custody to the magistrate's court, they may have been warned by police that refusing to confess before the magistrate will result in further violence, and they may not have access to legal counsel at the time of the confession. Magistrates, who deal with very large volumes of work and who may have informal professional relationships with the police, frequently accept recorded confessions without making adequate inquiry into their voluntary character.

Second, even where the explicit confession is excluded, information "discovered" as a result of custodial statements is admissible under Section 27 of the Indian Evidence Act (now Section 23 of the BSA). Under this provision, if an accused in police custody makes a statement that leads to the discovery of a fact, that fact and the portion of the statement that led to it are admissible. This provision creates a powerful incentive for police to torture suspects for "discovery statements": even if the statement itself is inadmissible, the discovered evidence is not. The result is that custodial torture serves a direct evidentiary function in the Indian criminal justice system, incentivizing the practice rather than eliminating it.

The Bharatiya Sakshya Adhiniyam, 2023, which replaced the Indian Evidence Act of 1872, has not resolved these structural problems. The key provisions relating to confessions and discovery have been substantially reproduced, with modifications to language rather than structure. The opportunity to eliminate the discovery statement provision, or to create a comprehensive exclusionary rule for any evidence obtained through custodial violence, was not taken.

2.5 The Absence of Anti-Torture Legislation: An International Outlier

India signed the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997 but has not ratified it. After more than a quarter century, India remains a signatory that has made a political commitment to the Convention's principles without accepting its binding legal obligations. This non-ratification places India in a small and undistinguished minority of states that have signed but not ratified UNCAT: a group that has been repeatedly criticized by UN treaty bodies and the human rights community.

The consequences of non-ratification are significant. India is not subject to the mandatory reporting requirements of UNCAT or to the examination of its compliance by the Committee Against Torture. It is not subject to the Optional Protocol to UNCAT (OPCAT), which establishes a system of regular visits by independent international and national monitoring bodies to places of detention. The National Preventive Mechanism required by OPCAT, which would provide independent oversight of all detention facilities in India, does not exist.

Crucially, there is no national legislation in India that specifically criminalizes torture or cruel, inhuman, or degrading treatment or punishment. The criminal offences in the Indian Penal Code and its successor the Bharatiya Nyaya Sanhita that are most commonly applied in cases of custodial torture, including voluntarily causing hurt (Section 323), voluntarily causing grievous hurt (Section 325), and assault (Section 351), were designed for the general law of violence, not for the specific context of state-inflicted torture. They do not capture the specific character of torture as an exercise of official power, do not provide for the specific accountability of the commanding officer, do not recognize the non-derogable character of the prohibition, and carry maximum sentences that are wholly disproportionate to the gravity of the offense of torture as understood in international law.

The Prevention of Torture Bill, which has been introduced in Parliament on multiple occasions and most recently was reported to be under consideration in 2024, has never been enacted. The bill, which would create a specific offense of torture by public servants and provide for enhanced penalties and accountability, has been stalled by the same combination of executive indifference and political calculation that has prevented UNCAT ratification. The government's implicit position, reflected in its actions even if not in its rhetoric, is that a comprehensive anti-torture law would create legal risks for security forces whose operational effectiveness, as the government understands it, depends on access to coercive interrogation methods.

The Diplomat's April 2026 analysis titled "Torture by Design: Why India's Laws Are Not Enough" articulates the problem with particular clarity: public discourse in India tends to frame custodial torture narrowly as brutality during interrogation, violence used to extract confessions or information. This limited understanding obscures the fact that torture extends far beyond the interrogation room. It persists within prisons, embedded in everyday practices of discipline, control, and punishment. The Indian context reveals how these logics of violence operate through caste, shaping who is surveilled, criminalized, and subjected to custodial violence.

CHAPTER THREE: THE UNDERTRIAL CRISIS: PUNISHMENT BEFORE CONVICTION AND THE JURISPRUDENCE OF BAIL

3.1 The Scale of the Crisis: Dimensions of a Catastrophic Failure

The undertrial crisis in India is not merely a technical legal problem or an administrative challenge. It is one of the most profound and comprehensive violations of human rights in the country: the systematic confinement of hundreds of thousands of legally innocent people in conditions of severe deprivation, for periods that frequently exceed what any criminal sentence for their alleged offenses would have involved, in conditions that are themselves forms of punishment.

The NCRB data is stark. Of India's 573,220 imprisoned persons as of the latest available data, 434,302 are undertrial detainees. These individuals have been charged with offenses but not convicted. Under the legal system's own principles, they are presumed innocent. The presumption of innocence is not merely a procedural nicety: it is one of the foundational

principles of the criminal justice system in any democracy committed to human rights. It holds that the burden of proving guilt falls on the prosecution, that the accused need not prove their innocence, and that, pending that proof, the accused must not be treated as guilty. The incarceration of four hundred and thirty-four thousand presumptively innocent people is, on its face, a massive and continuous violation of the presumption of innocence.

The overcrowding data compounds the violation. India's prisons have a sanctioned capacity of 425,609 persons. With 573,220 actually incarcerated, the national average occupancy rate stands at 131.4 percent. Many individual prisons are substantially more overcrowded: occupancy rates of 200, 300, or even 400 percent are documented in specific facilities. The physical conditions produced by this overcrowding are incompatible with the basic requirements of human dignity: there is inadequate sleeping space, inadequate toilet facilities, inadequate ventilation, inadequate medical care, and inadequate access to legal counsel or family communication.

The distribution of this overcrowding across the population is not uniform. The most overcrowded prisons are typically in the states with the largest poor populations, and the most overcrowded sections within prisons are those housing the poorest inmates. Prisons in Delhi, Uttar Pradesh, and Maharashtra, three of India's largest and most populous states, are among the most severely overcrowded. The Tihar Jail complex in Delhi, one of the largest prison complexes in Asia with an official capacity of around 10,000 prisoners, regularly houses significantly more than that capacity.

3.2 The Bail System: How Poverty Becomes Imprisonment

The bail framework in India has been analyzed exhaustively in the jurisprudential literature and criticized in Supreme Court judgments going back decades. The fundamental problem is straightforward: India's bail system is financially structured, requiring monetary sureties as a condition of release, which means that the poor remain imprisoned while the wealthy obtain release, regardless of the relative gravity of their alleged offenses or the relative strength of the evidence against them.

This financial structure of bail has a deep historical connection to colonial law. The bail provisions of the Code of Criminal Procedure inherited from British India were designed for a society in which the colonial state had a direct interest in maintaining access to potential laborers and tax-payers while also controlling the movements of potentially resistant populations. The financial surety requirement served this dual purpose: it allowed those with property and social connections to secure their freedom while ensuring that the propertyless remained confined and available for whatever the state's purposes required.

The Supreme Court has addressed the bail crisis in multiple judgments. In Satender Kumar Antil v. Central Bureau of Investigation (2022), the Court issued comprehensive directions on the implementation of the bail provisions of the CrPC, noting with dismay that the statutory provision for bail (Section 437 CrPC, now Section 478 BNSS) was being routinely ignored by lower courts. The Court specifically noted that bail is the rule and jail is the exception, that personal bond in lieu of surety must be accepted in appropriate cases, and that the financial inability of the accused to furnish surety must be considered when setting bail conditions. These

are all statements of existing law rather than new developments: the problem is that existing law has been systematically ignored.

The Bharatiya Nagarik Suraksha Sanhita of 2023 introduced a new provision in Section 479 that allows undertrial prisoners who have served half the maximum imprisonment period for the offense with which they are charged to apply for bail on a personal bond. This is a significant step, but it applies only to first-time offenders and is subject to exceptions for offenses carrying the death penalty or life imprisonment, which include many of the offenses for which marginalized communities are most commonly charged. Its implementation has been patchy and dependent on the individual attitudes of magistrates and judges.

The political economy of the bail crisis deserves explicit analysis. The wealthy accused in India routinely secure bail in cases involving serious offenses because they can afford the financial surety, because they can afford senior legal counsel who can make persuasive arguments for bail, because they have the social connections that serve as unofficial sureties against flight risk, and because the courts, consciously or unconsciously, treat the social profile of an accused as a proxy for the risk of flight or further offense. The poor accused, charged with lesser offenses, cannot secure bail because they cannot afford the surety, cannot afford effective legal representation, and are perceived as higher risk partly because of their social profile. The bail system thus implements a form of social sorting that reproduces the hierarchies of the outside world within the prison, while sanctifying that sorting with the neutral language of procedural law.

3.3 The Philosophy of Detention Pending Trial: Liberal Theory and Its Indian Failure

The philosophical justification for pre-trial detention in liberal political theory is narrow and carefully constrained. John Stuart Mill's harm principle, which grounds liberal political philosophy's approach to coercive state action, permits liberty restrictions only to prevent harm to others. Pre-trial detention, on this view, is justified only when the risk of the accused causing further harm to others, or the risk of the accused absconding to avoid trial, or the risk of the accused interfering with evidence, is sufficiently serious to justify the severe harm of imprisonment.

The critical word is "severe." Imprisonment pending trial is not a neutral, costless measure that merely ensures the accused's availability for their trial date. It is a serious deprivation of liberty that carries with it all the physical, psychological, social, and economic harms associated with imprisonment: the loss of employment and income, the disruption of family relationships, exposure to violence and disease in an overcrowded prison environment, the psychological damage of confinement, the social stigma of imprisonment even before conviction, and the severe practical disadvantage in preparing one's defense that imprisonment creates.

Herbert Packer's classic analysis of the criminal process in "The Limits of the Criminal Sanction" (1968) identifies two competing models of criminal justice: the "crime control model," which prioritizes the efficient processing and incapacitation of the guilty, and the "due process model," which prioritizes the protection of individual rights and the prevention of wrongful conviction. In India, the criminal justice system as actually practiced deviates from both models in its treatment of undertrial detainees: it subjects them to the disadvantages of the crime control model,

particularly long pre-trial imprisonment, without the efficiency that model promises in return, and it fails to provide the due process model's protections of adversarial equality and presumption of innocence.

The European Court of Human Rights, in its jurisprudence on Article 5(3) of the European Convention on Human Rights, which guarantees the right to trial within a reasonable time or release pending trial, has developed a sophisticated framework for analyzing the permissibility of pre-trial detention. The Court has held that the grounds for detention must exist at the initial point of detention and must continue to exist throughout the period of detention; that the grounds must be established by specific facts, not merely by reference to the general nature of the offense; and that the principle of proportionality requires that the least restrictive alternative to detention be used if it would be adequate to prevent the risk that justifies detention. Indian practice in undertrial detention violates all three of these requirements: detention is routinely maintained on the basis of the nature of the charge rather than specific assessed risk, is not reviewed with adequate frequency, and is not replaced with non-custodial alternatives when those would be adequate.

3.4 Judicial Delays and the Structure of Impunity

One of the primary causes of the undertrial crisis is the extreme delay in the Indian judicial system. India has approximately forty-five million cases pending before its courts at various levels, a backlog that has been growing for decades and that reflects a chronic deficit of judicial capacity relative to the demands placed on the system. The specific bottlenecks include the shortage of judges (India has approximately 20 judges per million people, compared to 50-100 in many comparable middle-income countries), the shortage of court infrastructure including courtrooms and support staff, the use of multiple adjournments as a standard litigation tactic, and the absence of effective case management systems in most courts.

For undertrial prisoners, these delays translate into years of imprisonment before their cases are finally determined. The NCRB data shows that many undertrial prisoners have been in custody for more than one year, more than two years, more than five years, and in extreme cases more than ten years. These periods of pre-conviction imprisonment are not anomalies or failures of specific cases: they reflect the systemic incapacity of the judicial system to process the volume of criminal cases brought before it within a reasonable time frame.

The constitutional remedy for excessive undertrial detention, the right to a speedy trial guaranteed by the Supreme Court as part of Article 21, was established in Hussainara Khatoon v. Home Secretary State of Bihar (1979), a case that itself arose from news reports about undertrial detainees who had been imprisoned for periods exceeding the maximum sentence for the offenses they were accused of. The Court ordered the release of those individuals and established the right to a speedy trial as a constitutional imperative. The establishment of this right has not translated into a speedy trial for the millions of undertrial prisoners who have come after.

The recent Bar and Bench editorial published in April 2025 observes with painful accuracy that the Supreme Court has rightly identified the problem repeatedly, but the challenge lies in applying the principle uniformly. Without consistency, personal liberty risks being reduced from

a right to a matter of discretion. This is the essence of the undertrial crisis: a constitutional right that exists in legal doctrine but is inconsistently and inadequately implemented in practice, leaving the exercise of that right dependent on the accident of which court and which judge a particular prisoner happens to appear before.

3.5 The PMLA Bail Paradox: Money Laundering and Its Extraordinary Restrictions

The Prevention of Money Laundering Act of 2002, particularly its bail provisions under Section 45, has emerged as one of the most aggressively used instruments of pre-trial imprisonment in recent years. Section 45 of the PMLA creates an extraordinary reverse burden for bail: in addition to the standard requirements for bail, the accused must establish that they are not guilty of the offense and that they are not likely to commit any offense while on bail. This effectively requires the accused to prove their innocence at the bail stage, long before trial, a direct inversion of the presumption of innocence.

The Supreme Court struck down an earlier version of Section 45's twin conditions in Nikesh Tarachand Shah v. Union of India (2017), holding that those conditions were unconstitutional in their application to scheduled offenses under the PMLA. But Parliament restored the provisions by amendment in 2018, and the Court subsequently upheld the amended version in Vijay Madanlal Choudhary v. Union of India (2022), in a judgment widely criticized by legal academics and practitioners as excessively deferential to the government's claimed anti-money-laundering objectives.

The practical consequence of the PMLA bail regime is that individuals accused of financial offenses defined very broadly under the Act can be and are imprisoned for years without conviction, in conditions that are themselves forms of severe punishment. The Enforcement Directorate, which enforces the PMLA, has expanded its caseload dramatically under the Modi government, with a pattern that critics argue reflects the selective prosecution of political opponents rather than genuine anti-corruption enforcement. Several state-level politicians from opposition parties have been arrested under the PMLA in circumstances that coincide with political transitions or electoral campaigns, raising serious concerns about the political use of financial criminal law as an instrument of opposition suppression.

CHAPTER FOUR: POLITICAL PRISONERS AND THE MACHINERY OF LONG-TERM DETENTION

4.1 Defining the Political Prisoner in the Indian Context

The concept of the "political prisoner" is contested in official discourse. India's government consistently denies that it holds political prisoners, insisting that all those detained under national security legislation are genuine security threats prosecuted through due process. This denial is consistent with the government's broader framing of its security apparatus as a legitimate response to genuine threats rather than as a mechanism of political suppression.

But the denial is incompatible with the documented reality. International human rights law does not use the term "political prisoner" as an official legal category, but working definitions have been developed by organizations including Amnesty International (which uses the term "prisoner of conscience") and the Council of Europe. The Parliamentary Assembly of the Council of Europe Resolution 1900 (2012) defines a political prisoner as a person who is deprived of liberty when the deprivation appears to be imposed for political motives including, among others: because the person advocated human rights, because the person was a member of a minority group, because the person exercised their right to free expression or assembly, or because the application of the law was discriminatory and inconsistent with international standards.

Applying this definition to India's detention landscape identifies a substantial population of political prisoners. The sixteen individuals arrested in connection with the Bhima Koregaon case, including academics, lawyers, poets, and human rights defenders, were advocates of human rights for marginalized communities. The journalists arrested under the UAPA and Public Safety Act were exercising their right to free expression. The students arrested for protesting the Citizenship Amendment Act were exercising their right to peaceful assembly. The Adivasi activists arrested for documenting violations in Maoist-affected areas were exercising their rights to free expression and human rights advocacy. In each of these cases, the criteria of the Council of Europe definition are met.

The conceptual framework of the "prisoner of conscience" developed by Amnesty International is particularly relevant. Amnesty defines a prisoner of conscience as someone imprisoned "solely for peacefully exercising their human rights." The "solely" qualifier is important: it distinguishes individuals whose imprisonment is entirely the product of their political or social activism from individuals whose cases involve genuine elements of criminal wrongdoing alongside political motivation. The Bhima Koregaon accused, particularly given the forensic evidence of fabricated digital evidence, meet the prisoner of conscience standard on the available evidence.

4.2 UAPA and the Architecture of Endless Detention: The Trial That Never Comes

The statistical reality of UAPA prosecution is among the most damning indictments of the law's use as a political tool. According to government data presented to Parliament in response to a written question in 2022, of the 24,134 persons arrested under the UAPA between 2016 and 2020, the overwhelming majority remained in prison awaiting trial. The Bar and Bench analysis published in April 2025 noted that 97.5 percent of UAPA arrestees from 2016 to 2020 remained imprisoned for years awaiting trial. This is not a rate of successful prosecution: it is a rate of successful imprisonment without the need for the inconvenience of a trial.

Section 43D(5) of the UAPA is the provision that makes this permanent pre-trial imprisonment possible. It provides that the court shall not grant bail if, on a perusal of the case diary or the report made under Section 173 of the CrPC, it is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true. The "prima facie true" standard is set at an extremely low level: the court does not need to be satisfied that the accusation is probably true, merely that there are reasonable grounds to believe it might be true on the surface. This standard is satisfied by virtually any charge sheet that the National Investigation Agency or state police choose to file, because the charge sheet is the prosecution's

own document, prepared under no adversarial scrutiny, and asserting whatever version of events the prosecution chooses to assert.

The Supreme Court clarified in NIA v. Zahoor Ahmad Shah Watali (2019) that when considering bail under UAPA Section 43D(5), the court should not embark on a detailed examination of the evidence: it should merely assess whether the allegations, if accepted as true, would disclose an offense under the UAPA. This interpretation, while apparently designed to expedite bail decisions, in practice makes bail in UAPA cases virtually impossible because it requires the court to assume the truth of the prosecution's allegations without any adversarial examination. The accused is in effect presumed guilty unless they can demonstrate on the face of the charge sheet that the charges are false, a standard that the accused, who has not yet seen all the evidence and has limited access to legal representation, cannot realistically meet.

The result is what can only be described as imprisonment by charge sheet: the filing of a charge sheet under the UAPA is sufficient, in most cases, to guarantee the accused's continued imprisonment until trial, regardless of the actual strength of the evidence. Since trials in UAPA cases routinely take five, seven, or even ten years to complete, the charge sheet is in effect a sentence of imprisonment, imposed by the executive through the mechanism of prosecution, without the judgment of a court on the merits of the case.

The comparison to what international law calls "preventive detention" is instructive. Preventive detention is the practice of confining individuals not because they have committed an offense but because they are considered likely to commit one. International human rights law permits preventive detention only within strict limits: it must be authorized by law, it must be based on genuine and specific grounds, it must be subject to prompt judicial review, and it must be of strictly limited duration. The UAPA's pre-trial imprisonment regime functions as a form of preventive detention dressed up in the language of criminal prosecution, with none of the safeguards that international law requires.

4.3 The Bhima Koregaon Accused: A Case Study in Political Imprisonment

The Bhima Koregaon case, introduced in Part One of this textbook, deserves more detailed examination as a case study in the specific dynamics of political imprisonment in India. The case, in which sixteen prominent academics, lawyers, poets, journalists, and human rights defenders were arrested between 2018 and 2020, represents the most significant use of the UAPA against civil society since the law was first enacted.

The arrests began on April 17, 2018, when police in Maharashtra arrested five individuals, including the poet and folk singer Varavara Rao, the lawyer and trade union activist Sudha Bharadwaj, the activist and journalist Gautam Navlakha, and the academics Shoma Sen and Mahesh Raut. The arrests were framed by police as a response to a Maoist conspiracy to assassinate Prime Minister Modi, with the alleged evidence consisting primarily of documents found on the computers and mobile phones of the accused that purported to show links to the Communist Party of India (Maoist).

The evidence has not withstood scrutiny. Digital forensic investigation by Arsenal Consulting, a Massachusetts-based firm, produced meticulous technical reports demonstrating that the key documents on the computers of multiple accused had been planted by a sophisticated attacker who had used the NetWire remote access trojan to gain access to the devices and place the incriminating files. The Arsenal reports, which are detailed, technical, and verifiable, were submitted to the courts handling the bail applications. They did not result in bail being granted. The judicial system's response to compelling forensic evidence of fabrication in a terrorism prosecution is perhaps the clearest possible illustration of the failure of due process in UAPA cases.

Father Stan Swamy, the Jesuit priest arrested in October 2020 at the age of eighty-three, is the human face of the Bhima Koregaon case's human rights catastrophe. Father Swamy had spent decades working with Adivasi communities in Jharkhand, advocating for their rights in the face of land dispossession, state violence, and the criminalization of Adivasi activism. He was the oldest person arrested under the UAPA in Indian history. He suffered from Parkinson's disease, which made his hands tremble so severely that he had difficulty drinking from a cup. When his lawyers applied to the court for a sipper cup to enable him to eat and drink, the National Investigation Agency filed an objection to the provision of the sipper cup. The sipper cup objection, trivial in itself, is a window into the character of the prosecution: a prosecution apparently concerned not with establishing the truth of serious criminal allegations but with the systematic degradation and punishment of an elderly man who had challenged power on behalf of the powerless.

Father Stan Swamy died in Judicial custody in Mumbai on July 5, 2021, eight months after his arrest, without ever having been tried. He had been suffering from multiple serious conditions in addition to Parkinson's disease, including a COVID-19 infection in prison. The Bombay High Court's statement, delivered shortly after his death, that his detention had been "unfortunate" reflects the inadequacy of judicial language when confronted with the murder of an innocent man by a system that refused to treat his manifestly failing health as a sufficient ground for bail.

4.4 GN Saibaba and the Disability Rights Dimension

The case of Professor GN Saibaba adds the dimension of disability rights to the already disturbing picture of political imprisonment in India. Saibaba was a professor of English at Delhi University, a 90 percent disabled individual who used a wheelchair following childhood polio, and a civil liberties activist who had written and campaigned on issues relating to Adivasi rights, the Maoist conflict, and the Indian security state. He was arrested in 2014 on charges of having Maoist links and was convicted in 2017 by a sessions court in Gadchiroli, Maharashtra, along with four others, under the UAPA. He was sentenced to life imprisonment.

Saibaba's imprisonment in the high-security Nagpur Central Jail, in an anda cell (a segregation cell for high-risk prisoners), is one of the most documented cases of custodial ill-treatment of a political prisoner in India. The cell was designed for the confinement of able-bodied prisoners: it provided no accommodation for a wheelchair user. Saibaba was unable to access the toilet in the cell independently. He was unable to move freely. He suffered from a range of serious medical conditions, including hypertension, pancreatitis, cardiovascular disease, and severe orthopedic

complications, that were exacerbated by the conditions of his confinement and that received inadequate medical attention.

The Bombay High Court acquitted Saibaba in October 2022, finding that the process of granting sanction for his prosecution under the UAPA had been procedurally flawed. The Supreme Court stayed the acquittal and directed retrial. Saibaba was re-convicted by the sessions court in March 2024. The Bombay High Court again acquitted him and all other accused in the case in November 2024, after finding that the sanction for prosecution was invalid. The Supreme Court again stayed the acquittal. Saibaba died in Pune on October 12, 2024, shortly after his second acquittal, from complications of the medical conditions that had been developing during his years of imprisonment. He was 57 years old.

The Saibaba case illustrates multiple systemic failures simultaneously: the failure of the UAPA's procedural safeguards to prevent politically motivated prosecution; the failure of the prison system to provide adequate accommodation and medical care for a severely disabled prisoner; the failure of the bail system to provide release for a man whose medical condition made continued imprisonment life-threatening; and the failure of the superior courts to provide prompt and consistent resolution of a case that turned substantially on a procedural question that should have been capable of rapid determination.

The specific disability dimension of the case engages the UN Convention on the Rights of Persons with Disabilities, which India ratified in 2007. Article 14 of the CRPD requires that persons with disabilities who are deprived of liberty are treated in compliance with the objectives and principles of the Convention, including reasonable accommodation. The denial of reasonable accommodation to Saibaba in the anda cell of Nagpur Central Jail violates this provision and reflects the complete absence of disability-responsive prison policy in the Indian system.

4.5 Kashmiri Political Prisoners and the Public Safety Act

The Public Safety Act of Jammu and Kashmir, examined in Part One of this textbook, continues to function in 2025 as the primary instrument of political imprisonment in Kashmir. The post-Pahalgam crackdown of April-May 2025 involved mass detentions under the PSA and the National Security Act, targeting political activists, journalists, academics, and ordinary citizens who had any public profile of criticism of Indian policy in Kashmir.

The PSA's administrative detention mechanism, which requires no charge, no trial, and no specific evidence of any particular criminal act, is particularly suited to the state's political purposes in Kashmir. When the government wishes to silence a particular voice, it does not need to construct a criminal case with evidence: it needs only to issue an administrative order asserting that the individual's activities threaten state security or public order. The administrative order requires no judicial authorization before the detention begins. Judicial review, while available in theory through habeas corpus proceedings before the High Court of Jammu and Kashmir and the Supreme Court, is slow, often formalistic, and frequently frustrated by the "revolving door" phenomenon of re-detention.

The revolving door pattern, in which a person released by court order following a successful habeas corpus challenge is immediately re-detained under a fresh PSA order, has been documented repeatedly and criticized by courts. In Farooq Ahmad Mir v. State of J and K, the Jammu and Kashmir High Court expressed strong disapproval of the practice, noting that it renders the right of habeas corpus meaningless and amounts to a contempt of the court's authority. Yet the practice continues. The government's implicit position is that the court's jurisdiction to review PSA orders does not prevent the government from issuing new orders once the reviewed order has been set aside.

The UN Working Group on Arbitrary Detention, in opinions issued in multiple cases involving PSA detainees, has consistently found that the detention violates international law. The Working Group's opinions, while not binding, represent authoritative interpretations of international human rights law by a body established by the UN Human Rights Council specifically for the purpose of examining cases of alleged arbitrary detention. India's response to these opinions has been dismissive: the government typically contests the Working Group's jurisdiction and disputes its factual findings, without engaging substantively with the legal analysis.

CHAPTER FIVE: THE CASTE AND RELIGION DIMENSIONS OF INCARCERATION

5.1 The Prison as Caste Institution: Structural Reproduction of Hierarchy

The Indian prison system does not merely incarcerate individuals who happen to be Dalit or Muslim in disproportionate numbers: it actively reproduces the caste hierarchy within its walls, assigning tasks, responsibilities, and privileges based on caste identity in ways that mirror and reinforce the caste order of the external society. This reproduction of caste within the prison is not accidental or merely a reflection of the caste composition of the prison population: it is a structural feature of prison administration that has deep historical roots and persists despite formal constitutional prohibitions.

The Supreme Court's landmark judgment in Sukanya Shantha v. Union of India (2024) brought this issue to the forefront of public and legal discourse. Sukanya Shantha, a journalist who had conducted extensive investigative reporting on conditions in Indian prisons, filed a petition challenging the caste-based segregation and labor assignment in Indian prisons. The Court's judgment, delivered in October 2024, found that the provisions of multiple state prison manuals that explicitly directed caste-based labor assignment, such as requiring that cleaning duties be performed by prisoners from "sweeper castes" and cooking duties by prisoners from "Brahmin castes," were directly unconstitutional under Articles 14, 15, and 17 of the Constitution.

The Court's finding confirmed what human rights organizations and prison researchers had documented for decades: that Indian prisons maintain an explicit caste hierarchy in labor assignment, consistent with the broader caste assignment of occupational roles in Indian society. "Sweeper" work, the cleaning of latrines, drains, and cell areas, is assigned to Dalit prisoners from communities whose ancestral occupation, assigned by caste, was precisely this form of degrading labor. "Brahmin" or upper-caste prisoners are assigned kitchen duties, which are

considered relatively dignified, or administrative assistance to prison staff. The labor assignment within the prison thus reproduces the stigma of caste even for prisoners who may have hoped that their incarceration had, whatever its other horrors, at least removed them from the caste assignment of their everyday life.

The Diplomat's April 2026 analysis noted that a recent ruling by the Supreme Court in the Sukanya Shantha case "brought into sharp focus" how logics of violence operate through caste, shaping who is surveilled, criminalized, and subjected to custodial violence. This is a critical observation: caste is not merely a factor in who ends up in prison, but in how they are treated once there. The Dalit prisoner who has been assigned cleaning duty, who eats from a separate vessel, who sleeps in the most overcrowded section, who receives medical attention last, is experiencing the continuation of the structural violence of caste within a formally secular state institution.

5.2 Food, Prayer, and Religious Discrimination in Prisons

The treatment of Muslim prisoners in Indian prisons raises specific concerns about religious discrimination that intersect with the broader pattern of anti-Muslim discrimination documented throughout this textbook. The right to practice one's religion, guaranteed by Article 25 of the Constitution and by Article 18 of the ICCPR, does not disappear upon imprisonment. A prisoner's right to practice their faith, within the reasonable constraints of prison administration, is a recognized fundamental right.

In practice, the experience of Muslim prisoners in many Indian prisons is one of systematic religious discrimination. The provision of halal food, which is a religious requirement for observant Muslims, is inconsistent and in many facilities non-existent. The ability to observe the daily prayers is frequently restricted by prison routines that do not accommodate prayer times. During Ramadan, the provision of Sehri (pre-dawn meal) and Iftar (post-sunset meal) is dependent on the attitude of individual prison superintendents rather than on any systematic provision. The wearing of religious dress, including the skull cap, may be restricted by prison dress codes.

These restrictions are qualitatively different from the reasonable limitations on religious practice that prison administration genuinely requires. They reflect the institutional culture of the Hindu-majority prison administration's indifference or hostility to Muslim religious needs, consistent with the broader cultural patterns that Hindu nationalist politics has reinforced. In the post-Pahalgam political climate, documented reports of increased harassment of Muslim prisoners in Indian jails by prison staff and by co-prisoners from Hindu nationalist backgrounds raise serious concerns about the protection of Muslim prisoners from targeted abuse.

The NCRB data on the religious composition of the prison population, which shows Muslim overrepresentation at approximately 21 percent of undertrials compared to 14-15 percent of the general population, must be read in this context. The overrepresentation reflects not merely the pattern of criminal justice system discrimination in the selection and prosecution of accused persons but also the specific treatment of Muslim prisoners within the system, including the

systematic failures of legal aid, bail provision, and trial scheduling that leave Muslim prisoners disproportionately in long-term undertrial detention.

5.3 The Adivasi Prisoner: Forest Rights Defenders as Criminals

The criminalization of Adivasi resistance to dispossession, examined in Part One of this textbook in connection with the Maoist conflict, has produced a substantial population of Adivasi political prisoners who are imprisoned not for genuine crimes but for asserting their legal rights under the Forest Rights Act, protesting against mining and industrial projects, or being labeled as Maoist sympathizers for living in conflict-affected areas.

The academic and activist Soni Sori, a school teacher from Chhattisgarh, exemplifies this pattern. Sori was arrested in 2011 on charges of serving as a courier between Maoists and a steel company, charges that she and her supporters deny. She was subjected to documented torture in police custody, including the insertion of gravel and stones into her vagina, which the Chhattisgarh police denied and which led to significant national and international outrage. The National Human Rights Commission directed the state government to pay compensation. Sori was eventually released in 2013. She subsequently won a local government election and has continued her activism. But her case illustrates the specific vulnerability of Adivasi women activists to sexualized violence in state custody.

The Adivasi experience of the criminal justice system is shaped by multiple layers of disadvantage. Language is a primary barrier: in states like Chhattisgarh, Jharkhand, and Odisha, many Adivasi communities speak languages that have no presence in the courts, police stations, or prison administration. Legal proceedings are conducted in Hindi or English, languages that many Adivasi accused do not speak or understand. The formal requirement of a court interpreter, while legally mandated, is frequently ignored or inadequately implemented. An accused person who cannot understand the charges against them, cannot follow the proceedings of their own trial, and cannot effectively communicate with their lawyers is not receiving due process in any meaningful sense.

The forest rights dimension adds another layer of complexity. Many Adivasi prisoners are imprisoned on charges relating to forest offenses: unauthorized occupation of forest land, cutting of forest trees, or movement through forest areas that is treated as evidence of Maoist activity. These charges are directly connected to the Forest Rights Act's failure of implementation: Adivasi communities that have been denied recognition of their forest rights under the Act are then criminalized for exercising those rights in practice. The imprisonment of forest rights claimants for exercising rights that the law itself recognizes but has failed to implement is one of the clearest examples of the criminalization of poverty and marginalization in the Indian prison system.

CHAPTER SIX: WOMEN IN PRISON: GENDER, VIOLENCE, AND THE FAILURE OF PROTECTIVE INSTITUTIONS

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6.1 The Specific Vulnerability of Women in Custody

Women in Indian prisons constitute a small but particularly vulnerable proportion of the prison population: approximately 4.3 percent of India's total prison population is female. Their small proportion does not diminish the severity of the rights issues they face: in some respects, women prisoners face more severe violations than their male counterparts, because the specific vulnerabilities created by gender intersect with all the other disadvantages of the prison environment.

The Supreme Court committee led by Justice Amitava Roy, appointed to examine conditions in Indian prisons and specifically the situation of women, found conditions in women's wards and women's prisons that it described as "deplorable." The committee documented overcrowding, inadequate sanitation, insufficient medical facilities, and a complete absence of gender-responsive programming. The specific health needs of women, including reproductive health care, obstetric services, and mental health services, were found to be systematically unaddressed.

The presence of children in prison, born to women who were imprisoned during pregnancy or who were imprisoned while nursing infants, represents one of the most disturbing aspects of women's imprisonment. Indian law permits children under six years of age to accompany their incarcerated mothers in prison. The children who grow up in prison environments, exposed to the deprivations and violence of institutional confinement, face developmental harms that are severe and long-lasting. A child who spends their first years of life in prison has not committed any offense and is being punished by the state's incarceration of their mother.

The specific situation of pregnant women in police custody is governed by the Sheela Barse guidelines and by subsequent Supreme Court directions, which require that pregnant women should not normally be held in police lock-ups and that medical attention must be provided. These guidelines are systematically inadequate in practice. Women who have been arrested by police report being subjected to the full range of custodial abuses, including sexual violence, while pregnant. The specific vulnerability of pregnancy to the physical stresses of custodial torture means that such violence carries additional risks of miscarriage, premature birth, and harm to the unborn child.

6.2 Sexual Violence in Custody: Systemic, Documented, and Unpunished

Sexual violence against women in police and prison custody is one of the most systematically under-reported and least prosecuted forms of custodial abuse in India. The barriers to reporting are extraordinarily high: the victim is in the custody of the perpetrator, has no independent means of communication, fears retaliation, and knows from experience or from the experience of others that complaints of sexual violence by women in custody are routinely dismissed, disbelieved, or used as grounds for further harassment.

The National Human Rights Commission has documented repeated instances of sexual violence in custody, issuing recommendations for compensation and action in cases where the evidence is overwhelming. But the compensation awarded, typically in the range of two to three lakhs (approximately $2,500 to $3,500), is wholly disproportionate to the gravity of the violation and

serves as an incentive for settlement rather than accountability. The officers responsible for the violence are rarely prosecuted: they are typically transferred to another posting, allowed to continue their careers, and in some cases promoted.

The Pinjra Tod and other feminist organizations that have worked with women in custody have documented a pattern in which women accused of political offenses, including student activists arrested under the UAPA for protesting the Citizenship Amendment Act, are subjected to gendered forms of harassment in police custody: threats of rape, obscene language, invasive physical searches, and various forms of sexual humiliation that do not rise to the level of rape but constitute sexual violence as defined in international human rights standards. These forms of gendered harassment are specifically designed to exploit the vulnerability that comes with being a woman in state custody and to communicate the message that women who exercise their political rights in public will face sexual consequences for doing so.

Catharine MacKinnon's feminist legal analysis of sexual harassment and violence as forms of sex discrimination in the exercise of power is directly applicable to this pattern. When police officers subject women political activists to sexual harassment and threatened violence in custody, they are not merely committing acts of individual misconduct: they are deploying the state's coercive apparatus to reinforce the message that women's political participation is transgressive and will be met with punishment that specifically targets their gendered identity. The sexual nature of the violence communicates that women who step outside the social roles assigned to them by the intersection of gender and caste will be subjected to the most intimate forms of degradation.

6.3 Bastar, Manipur, and Sexual Violence as a Tool of Conflict

The use of sexual violence against women as a tool of armed conflict and counterinsurgency is documented in both the Maoist-affected areas of central India and in the ethnic conflict in Manipur. In Bastar, Chhattisgarh, human rights organizations including the Women Against Sexual Violence and State Repression have documented multiple cases of rape and gang rape of Adivasi women by security forces during counterinsurgency operations. These operations, which routinely involve the overnight occupation of villages by security forces, create conditions of extreme vulnerability for women who cannot leave their homes without abandoning their families.

The July 2023 Manipur video, showing a mob parading two Kuki-Zo women naked through a village while police watched, was not an isolated incident but a concentrated and publicly visible expression of the use of sexualized violence against women as a weapon of ethnic conflict. The Supreme Court, which responded with unusual directness to the Manipur crisis, established a judicial committee to investigate atrocities and called for accountability. But two years after the events, the accountability mechanisms remain woefully inadequate, the displaced communities have not returned to their homes, and the specific perpetrators of the video incident have not been adequately prosecuted.

The connection between the Manipur situation and the broader pattern of impunity for sexual violence in conflict-affected areas is important. The AFSPA, by providing impunity for security force members, creates a structural protection for those who commit sexual violence in the

course of security operations. The lack of investigation and prosecution of rape allegations involving security forces in AFSPA areas has been documented repeatedly by the Justice Verma Committee (2013), the Supreme Court, and international human rights organizations. The culture of impunity that AFSPA creates does not merely protect individual perpetrators: it communicates a message to the entire security force that sexual violence in the course of operations will not be punished, thereby facilitating its use as a deliberate tactic.

CHAPTER SEVEN: SOLITARY CONFINEMENT, ISOLATION, AND THE JURISPRUDENCE OF MENTAL HARM

7.1 Solitary Confinement as Torture: International Standards and Indian Practice

The practice of solitary confinement, the isolation of a prisoner in a cell with minimal or no meaningful human contact for twenty-two to twenty-four hours per day, has been extensively analyzed in the international human rights literature and in the jurisprudence of human rights bodies. The UN Special Rapporteur on torture, Juan Mendez, in his 2011 report to the UN General Assembly, concluded that solitary confinement "constitutes cruel, inhuman or degrading treatment or punishment" when it is prolonged (defined as exceeding fifteen days) and that it may amount to torture in the specific context of particular vulnerable individuals or particularly harsh conditions.

The Nelson Mandela Rules (the revised UN Standard Minimum Rules for the Treatment of Prisoners, adopted in 2015) codify the prohibition on prolonged solitary confinement, defining it in Rule 44 as isolation for more than fifteen consecutive days and prohibiting the imposition of indefinite solitary confinement or solitary confinement for prolonged periods. The Rules establish a framework of minimum standards that should govern all prison systems that claim to respect human rights.

The Indian Supreme Court addressed solitary confinement in Charles Sobraj v. Superintendent Central Jail (1978), holding that solitary confinement as a punitive measure within the prison system requires specific judicial authorization and cannot be imposed by prison authorities at their discretion. The Court's reasoning drew on Article 21, which requires that any deprivation of life or liberty must be in accordance with procedure established by law, and on the basic principle that punishment for prison infractions must itself be proportionate and subject to legal constraint.

The anda cell system in Indian high-security prisons, most prominently in Nagpur Central Jail, is a form of solitary confinement that has been applied in a number of high-profile political cases. The "anda" (egg-shaped) cell is a segregation unit where prisoners are kept in near-total isolation. GN Saibaba was held in an anda cell for years. Bhima Koregaon accused Gautam Navlakha was held in the anda cell section of Taloja Central Jail near Mumbai. The conditions of isolation, limited access to natural light, severely restricted physical movement, and minimal social contact in these cells are directly contrary to both the Supreme Court's prohibition on unauthorized solitary confinement and the international standard against prolonged isolation.

7.2 The Psychological Harm of Isolation: Neuroscience, Psychiatry, and Rights

The psychological harm of prolonged solitary confinement is one of the best-documented findings in prison psychology and neuroscience. Stuart Grassian's pioneering research in the 1980s on the psychiatric effects of solitary confinement documented a specific syndrome of isolation-related pathology that he called "SHU syndrome" (SHU standing for Security Housing Unit, the US equivalent of the anda cell). The syndrome includes hyper-responsivity to external stimuli, perceptual distortions and hallucinations, paranoia and panic attacks, difficulties with thinking, concentration and memory, hypersensitivity to stimuli, aggressive fantasies, and self-mutilation.

Subsequent neuroscientific research has confirmed and extended Grassian's clinical observations. The human brain is a social organ: it is designed through evolutionary and developmental processes to function in conditions of social interaction and requires that social stimulation to maintain normal neurological function. Extended periods of social isolation disrupt the normal functioning of multiple neurological systems, producing measurable changes in brain structure and function that are associated with psychological distress, cognitive impairment, and behavioral dysregulation.

The legal implications of this neuroscientific evidence are clear: prolonged solitary confinement is not merely unpleasant but actively harmful, causing measurable neurological damage to those subjected to it. This makes prolonged solitary confinement a form of physically harmful treatment that falls within the definition of cruel, inhuman, or degrading treatment or punishment regardless of whether any subjective distress is produced, because the objective harm to the brain structure and function occurs whether or not the prisoner consciously experiences it as distressing. This analysis is reinforced by the ECHR's jurisprudence on Article 3, which has held that treatment need not cause actual physical injury to constitute "degrading treatment" if it is "humiliating" in nature or causes "feelings of fear, anguish and inferiority."

GN Saibaba's deteriorating health during his years of imprisonment, which included multiple serious psychological symptoms alongside his physical conditions, is consistent with the documented effects of prolonged isolation in inadequate conditions. Father Stan Swamy's reported cognitive decline in the months before his death, which friends and lawyers who visited him described, is consistent with the effects of isolation-induced deterioration in an elderly person with a pre-existing neurological condition.

7.3 The Anda Cell System and Its Constitutional Invalidity

The anda cell system in Indian high-security prisons has no clear statutory authorization in any Prison Act or Prison Manual that has been scrutinized by the courts. The decision to place a prisoner in an anda cell appears to rest on the administrative discretion of prison authorities, without the judicial authorization that the Supreme Court in Charles Sobraj required for solitary confinement as a punitive measure.

The distinction between punitive and administrative uses of solitary confinement is one that the international standards draw carefully. The Nelson Mandela Rules prohibit the disciplinary use

of solitary confinement exceeding fifteen days. They also address administrative segregation, which is the separation of a prisoner from the general population for safety or management reasons rather than as a punishment, requiring that it be subject to review, that it be limited in duration, and that the prisoner be provided with meaningful human contact and adequate conditions. The Indian anda cell system does not comply with either the disciplinary or the administrative standards.

The prolonged placement of prisoners like GN Saibaba and Gautam Navlakha in anda cell conditions, without judicial authorization, without periodic review by an independent authority, and without the conditions required by international standards, is a form of punishment imposed by administrative fiat that violates Article 21 and the Supreme Court's own jurisprudence. The fact that courts have largely failed to address this pattern, despite having the legal tools to do so, reflects the broader failure of judicial accountability for executive action in the domain of security-related detention.

CHAPTER EIGHT: CUSTODIAL DEATH AND THE ANATOMY OF IMPUNITY

8.1 The Statistics of Death: What the Numbers Reveal

The National Human Rights Commission's data on custodial deaths, which it receives through the mandatory notification requirement established by the Protection of Human Rights Act, provides the most comprehensive official picture of the scale of the problem. The NHRC reported 2,739 custodial deaths in 2024, following approximately 2,400 in 2023. These figures include deaths in both police custody and judicial custody (i.e., prisons), and they include both natural deaths and deaths from causes classified as unnatural.

The "unnatural deaths" category is where the evidence of torture and abuse is most concentrated. NCRB data for 2022 showed 159 unnatural deaths among 1,995 total deaths in judicial custody. But the classification of deaths as "natural" or "unnatural" is performed by the prison administration, creating an obvious incentive to classify deaths resulting from abuse or inadequate medical care as natural. Independent medical examination of prisoner deaths, which would be necessary to establish the true proportion of abuse-related deaths, is rare and inconsistently required.

The Global Torture Index 2025 notes that police officials labeled as "encounter specialists" receive promotions for conducting extrajudicial killings, demonstrating institutional complicity. This observation captures an important dimension of the custodial death phenomenon that extends beyond deaths in formal custody to include deaths in "encounters": staged confrontations in which police or security forces kill suspects and claim they were killed in an exchange of fire. The encounter phenomenon, which was briefly subjected to intensive judicial scrutiny following the Supreme Court's direction in the EEVFAM case (2016) requiring investigation of all alleged encounters, has not been eliminated and continues to be a significant source of extrajudicial killing with official endorsement.

The accountability for custodial deaths operates through several mechanisms: the mandatory notification to the NHRC; magistrate inquiry under Section 176 of the CrPC (now Section 196 of the BNSS) in cases of deaths in police custody; criminal prosecution of officers responsible; and civil suits for compensation. Each of these mechanisms fails in characteristic ways that collectively produce a near-complete absence of meaningful accountability.

The NHRC's investigations of custodial death notifications are limited in their investigative capacity. The Commission can issue notices to state governments, call for reports, and recommend compensation payments. But it cannot compel the arrest or prosecution of responsible officers, cannot conduct independent criminal investigations, and its recommendations of compensation are not binding. States regularly ignore NHRC recommendations for years without consequence.

The Section 176 magistrate inquiry is often perfunctory: conducted by an executive magistrate who is part of the same administrative hierarchy as the police, with limited investigative resources, and with no adversarial representation of the victim's family. The tendency of executive magistrates to accept police versions of events is well-documented. The Supreme Court's direction in D.K. Basu and subsequent cases that judicial magistrates should conduct inquiries in cases of death in police custody has been inconsistently implemented across states.

8.2 The Specific Pattern of Dalit and Muslim Custodial Deaths

The custodial death data, when disaggregated by the caste and religious identity of victims, reveals a pattern that is entirely consistent with the broader picture of discrimination documented throughout this textbook. Dalit and Muslim individuals are disproportionately represented among those who die in police custody, particularly in cases where the death results from alleged torture rather than medical causes.

Several specific cases from 2024 and 2025 illustrate the pattern. The custodial death of P. Jeyaraj and J. Benicks in Tamil Nadu in June 2020 drew national attention when it became known that the father and son had been beaten to death in Sattankulam police station after being arrested for allegedly keeping their mobile phone shop open beyond curfew hours. Both were Tamil Christian men. The graphic nature of the injuries, documented in post-mortem reports, and the fact that they had been held in custody for days during which they were repeatedly tortured, generated significant public outrage and led to the arrest of several police officers. This case, while exceptional in the attention it received, is representative of a widespread pattern: the combination of minor pretext for arrest, extended custody without judicial production, and systematic physical abuse during that custody.

The J&K constable torture case of 2025, referenced in the Lex Scripta analysis, resulted in the Supreme Court directing a CBI inquiry and awarding compensation, recognizing that torture in custody had occurred and that the state had an obligation to provide redress. This is a welcome development but it does not address the systemic pattern: individual cases of particularly egregious abuse that attract media or judicial attention result in specific accountability, while the thousands of cases that do not attract such attention proceed without any accountability whatsoever.

8.3 The Extrajudicial Execution Pattern: Encounters and Fake Encounters

The phenomenon of "encounter killings," extrajudicial executions framed as self-defense by police or security forces, is a significant component of India's custodial death problem. Encounter killings are particularly prevalent in Uttar Pradesh, Andhra Pradesh, Telangana, and in conflict-affected areas including Kashmir, the Northeast, and the Maoist belt.

In Uttar Pradesh, the Yogi Adityanath government has explicitly celebrated encounter killings as a law enforcement achievement. Senior state government officials have described encounters as a solution to crime, and the police officials with the highest encounter tallies have been publicly honored. Human Rights Watch documented multiple alleged fake encounters in Uttar Pradesh between 2017 and 2025, finding a consistent pattern in which individuals were reportedly picked up by police, held in informal custody for a period, and then killed and presented as having been shot in an exchange of fire during an arrest operation.

The Hyderabad rape case "encounter" of December 2019, in which four men accused of raping and killing a veterinarian were killed by police while allegedly attempting to escape in custody, generated a complex and deeply troubling public response. While many people expressed satisfaction at the killings, treating them as a form of justice for the rape victim, the legal and human rights analysis is clear: killing of suspects before trial, regardless of the nature of the alleged offense, is extrajudicial execution. It denies the accused their right to a fair trial, it denies the possibility of error correction (the four men killed may or may not have been guilty), and it provides cover for the disappearance of evidence and the concealment of police negligence in the original crime.

The Supreme Court's response in the Hyderabad encounter case was to establish an independent commission of inquiry. The commission's report found that the killings were not genuine encounters, that the accused were killed in cold blood while in custody, and that the police version of the incident was fabricated. No criminal prosecution has resulted from these findings. The commission's report remains the latest in a long line of official findings of extrajudicial killing that have produced no accountability.

CHAPTER NINE: THE CARCERAL STATE: THEORETICAL FRAMEWORKS FOR UNDERSTANDING INDIA'S PRISON SYSTEM

9.1 Foucault's Disciplinary Society and Its Indian Articulation

Foucault's analysis of the "disciplinary society" in "Discipline and Punish" proposed that the prison is not a failure of the justice system but its truth: that the ostensible goal of rehabilitation is a convenient fiction that masks the actual function of the prison, which is the production of detailed knowledge about individuals and populations, the maintenance of a system of hierarchical surveillance, and the normalization of certain forms of conduct while marking other forms as deviant and subject to intervention.

Applied to India, Foucault's analysis requires modification to account for the specific historical and social context. The Indian prison system does not primarily function as a technology for producing docile laborers for an industrial economy, which was the specific economic context of Foucault's analysis. It functions primarily as a technology of social sorting: the removal from public life of those who threaten, or who are perceived to threaten, the existing social and political order.

This social sorting function is clearly visible in the demographic composition of the prison population. The people who are removed from public life through incarceration are predominantly those at the bottom of the social hierarchy, whose removal reinforces the existing order rather than challenging it, and those who actively challenge the order through political activism, journalism, or human rights advocacy. The poor Dalit undertrial imprisoned for three years for a minor offense while the evidence against him consists largely of a police witness statement is having his threat to the social order neutralized. The journalist imprisoned under the UAPA for reporting on Kashmir is having their challenge to the official narrative neutralized. Both are performing the same function for the social and political order, though the means and the explicit justification differ.

Foucault's concept of "normalization," the process through which certain forms of conduct are defined as normal and others as deviant in ways that serve the interests of dominant groups, is particularly relevant to the criminalization of Adivasi and Dalit resistance. When Adivasi communities assert their forest rights under the Forest Rights Act, they are engaging in conduct that is legal and constitutionally protected. But the Indian security state defines this conduct as a form of Maoist insurgency and criminalizes it accordingly. The normalization process defines the exercise of legal rights by marginalized communities as deviance requiring criminal response, while defining the exercise of power by dominant groups as legitimate and requiring no special justification.

9.2 Angela Davis and the Prison-Industrial Complex: Abolitionist Theory in the Indian Context

Angela Davis's abolitionist analysis, most fully developed in "Are Prisons Obsolete?" (2003) and "Abolition Democracy" (2005), challenges the assumption that imprisonment is a necessary and permanent feature of human social organization. Davis argues that the prison, particularly in the American context, is best understood not as a response to crime but as an institution that has developed a functional relationship with various industries (construction, food service, telephony, security) and with the political economy of racial capitalism, producing what she calls the "prison-industrial complex" in which the growth of the prison population is driven by economic and political interests rather than by the genuine imperatives of crime control.

Davis's analysis of the racial dimensions of American incarceration, in which Black and Latino men are massively overrepresented in the prison population in ways that reflect the historical dynamics of racial capitalism, translates into the Indian context through the lens of caste, religion, and class. The overrepresentation of Dalits, Muslims, and Adivasis in India's prison population is not a coincidence or a reflection of higher rates of criminal conduct in those communities. It is a reflection of the structure of a society that assigns those communities the

roles of social disadvantage and economic marginalization, subjects them to more intensive policing and less sympathetic legal treatment, and maintains a prison system that serves, among other functions, the social purpose of keeping those communities in a condition of managed subordination.

Davis's call for abolition, understood not as the simple elimination of all prisons but as the construction of social alternatives that address the root causes of crime and the substitution of genuinely transformative forms of accountability for punitive incarceration, is radical in the Indian context but not incoherent. The alternative to imprisoning the undertrial worker who cannot afford bail is a non-custodial supervision system that ensures his appearance at trial while allowing him to maintain his livelihood and his family relationships. The alternative to imprisoning the human rights defender for years under the UAPA is a criminal justice process that actually adjudicates charges on the evidence within a reasonable time. The alternative to imprisoning Adivasi forest rights claimants is implementation of the Forest Rights Act. None of these alternatives requires the abolition of criminal law or the abandonment of genuine security concerns: they require the substitution of targeted, evidence-based, and humanizing responses to genuine risks for the blunt, indiscriminate, and degrading instrument of mass imprisonment.

9.3 The Model Prisons Act 2023: Reform Proposal or Paper Promise?

The National Model Prisons and Correctional Services Act of 2023 represents the most significant legislative initiative in prison reform since independence. The Act, which the central government has recommended to states for adoption, introduces a comprehensive reformulation of prison management philosophy: it adopts the language of "correctional services" rather than mere custody, it mandates rehabilitative programming including education, vocational training, and counseling, it provides explicit rights for prisoners including rights to communication, legal assistance, and healthcare, and it establishes grievance redressal mechanisms.

The Act's language on prisoners' rights is genuinely progressive. Section on rights of prisoners recognizes the right to communicate with family members, the right to access legal counsel, the right to receive medical attention, the right to practice one's religion, and the right to be protected from torture and ill-treatment. These provisions, if implemented, would represent a substantial improvement over existing practice.

But the critical analysis must focus on the gap between the Model Act's aspirations and the structural conditions that determine whether those aspirations can be realized. Several factors work against effective implementation.

First, the Act is a model legislation, not a binding central law. States can adopt it, adapt it, or ignore it. The experience of previous model legislation in India, including the model prison manuals developed by the Bureau of Police Research and Development, suggests that adoption is slow and partial, and that formal adoption does not guarantee substantive compliance.

Second, the resources required to implement the Act's provisions are substantial and are not guaranteed. Rehabilitative programming requires trained staff, program materials, and physical space. Healthcare requires medical personnel and facilities. Legal aid requires lawyers.

Communication rights require communication infrastructure. In prisons that are operating at 131 percent of capacity, already short-staffed, medically under-resourced, and physically deteriorating, the additional investment required for genuine implementation of the Model Act's provisions is very large.

Third, the institutional culture of prison administration is resistant to the reformulation that the Model Act requires. An institutional culture that has been shaped by colonial traditions of control and punishment, reinforced by decades of post-colonial neglect, and organized around security rather than rehabilitation, does not transform itself merely because a new legislative text has been adopted. Cultural change requires sustained leadership, external accountability, and the kind of investment in training and professional development that is inconsistent with the current political economy of prison management.

9.4 The Niti Aayog, Criminal Justice Reform, and Structural Limitations

The broader project of criminal justice reform in India, which encompasses not only prisons but the police, the courts, the prosecution service, and the legal aid system, has been the subject of numerous committee recommendations, working group reports, and expert analyses over the past several decades. The Law Commission of India has produced multiple reports on criminal justice reform. The Malimath Committee (2003), the Madhav Menon Committee (2007), the K.T. Thomas Committee (2012), and various Niti Aayog task forces have all produced recommendations that have been largely unimplemented.

The structural reason for this pattern of recommendation without implementation is rooted in the political economy of criminal justice reform. Criminal justice reform is costly, distributes its benefits primarily to those who have least political power (prisoners, accused persons, marginalized communities), and distributes its costs primarily to those who have most political influence (police, the security establishment, the prosecution service). In a political system where organized power routinely defeats diffuse public interest, criminal justice reform consistently fails despite widespread recognition of the need for it.

The specific political dynamic of the Modi years has added an additional obstacle. A government whose political brand is built on "toughness" on crime and security, whose core constituency views the criminal justice system primarily as an instrument for controlling threatening outgroups rather than as a system for producing just outcomes, and which has actively expanded the use of criminal law as a tool of political suppression, has no genuine interest in the kind of criminal justice reform that would reduce mass imprisonment, expand prisoners' rights, and eliminate the political utility of pre-trial detention as a silencing mechanism.

The Niti Aayog's engagement with prison reform has been largely confined to technocratic recommendations about administrative efficiency: reducing case backlogs through technology, improving case management, digitizing prison records. These are useful but peripheral interventions that do not address the fundamental structural problems of the undertrial crisis, the bail framework, the UAPA bail standard, the absence of anti-torture legislation, or the caste and religious discrimination embedded in prison administration.

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CHAPTER TEN: INTERNATIONAL STANDARDS, COMPARATIVE LAW, AND THE TREATY FRAMEWORK

10.1 The Nelson Mandela Rules and India's Non-Compliance

The Nelson Mandela Rules, formally the United Nations Standard Minimum Rules for the Treatment of Prisoners, were revised and updated in 2015 in recognition of the advances in understanding of prisoner rights, prison management, and the neuroscience of confinement since the original rules were adopted in 1955. The revised rules cover every aspect of prison conditions: physical accommodation, medical care, discipline, contact with the outside world, access to legal counsel, complaints and inspection, classification and individualization, and the specific requirements for vulnerable groups including women, juveniles, foreign nationals, and persons with mental illness.

The Rules are not a binding treaty: they are adopted by the UN General Assembly and represent a comprehensive statement of international consensus on the minimum requirements of humane prison administration. But they are regularly cited by international human rights bodies as establishing the applicable standard against which state prison systems are measured, and they have been incorporated into the jurisprudence of the ICCPR's Article 10, which requires that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

India's prison system fails to comply with the Nelson Mandela Rules in multiple fundamental respects. Rule 5 on the prohibition of discrimination requires that the rules be applied impartially, without adverse discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status: India's prison system, as documented in the Sukanya Shantha case and in the broader human rights literature, systematically discriminates on the basis of caste and religion. Rule 11 on accommodation requires that every prisoner must have adequate personal space: India's prisons, operating at an average of 131 percent capacity, do not provide adequate space by any reasonable measure. Rule 24 on healthcare requires that prisoners enjoy the same standards of healthcare available in the community: India's prison healthcare is, in most facilities, dramatically inferior to community healthcare. Rule 43 on the prohibition of solitary confinement and related restrictions has been comprehensively violated in the anda cell cases documented above.

10.2 The ICCPR Article 10 and India's Reporting Obligations

Article 10 of the International Covenant on Civil and Political Rights, to which India is a party, establishes the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person. The UN Human Rights Committee's General Comment 21, adopted in 1992, provides detailed guidance on the implementation of Article 10, covering the obligations of states with respect to physical conditions, the separation of categories of prisoners, the purpose of penitentiary systems, and the specific requirements for pretrial detention.

India's fifth periodic report to the Human Rights Committee, examined in July 2024, generated a comprehensive set of concluding observations that directly addressed prison conditions and custodial violence. The Committee expressed concern about reports of widespread and systematic torture and ill-treatment in detention facilities, the high number of custodial deaths, the failure to ratify UNCAT, the absence of specific legislation criminalizing torture, the overcrowding and inadequate conditions in prisons, and the absence of effective mechanisms for detainees to complain about ill-treatment without fear of retaliation.

The Committee's recommendations track the reform agenda identified throughout this Part: ratification of UNCAT and OPCAT, adoption of comprehensive anti-torture legislation, independent investigation of all custodial deaths, reform of the bail system to address the undertrial crisis, abolition of mandatory minimum bail surety requirements, and establishment of effective and independent prison monitoring mechanisms.

India's response to the Human Rights Committee's concluding observations has followed the standard pattern for all such international engagement: expressions of general commitment to human rights principles combined with a defense of existing practice and a rejection of specific criticisms as based on incomplete or inaccurate information. The substantive reforms called for have not been initiated. The bureaucratic response to international accountability is not a precursor to change but a substitute for it.

10.3 Comparative Analysis: What India Could Learn From Transformative Prison Systems

The comparative analysis of prison systems in contexts that have undergone genuine transformation provides a useful framework for understanding what is possible and what institutional and political conditions make it possible. The Scandinavian prison model, particularly in Norway, is the most frequently cited example of a prison system based on principles of rehabilitation, normalization, and minimum restriction. Norwegian prisons maintain relatively small populations, provide meaningful programming and education, allow prisoners significant autonomy and contact with the outside world, and achieve very low rates of reoffending. The investment per prisoner is high, but the reduction in reoffending and the avoidance of the long-term social costs of mass incarceration make the model cost-effective over longer time horizons.

The South African constitutional court's jurisprudence on prisoners' rights, developed in the post-apartheid constitution's rights framework, provides a more directly relevant comparative model for India. South Africa's Constitution of 1996 explicitly includes a prisoners' rights clause in Section 35, guaranteeing rights to humane conditions, to rehabilitation programmes, and to conditions consistent with human dignity. The Constitutional Court has actively enforced these rights, ordering improvements to specific facilities, awarding compensation for violations, and developing a substantive jurisprudence of prisoner dignity that has materially influenced prison administration.

The closest comparable judicial development in India is the Supreme Court's prisoners' rights jurisprudence developed in the cases from Sunil Batra to Sukanya Shantha. But the Indian

Court's directions have not been systematically implemented, and the Court has not developed the enforcement mechanisms that would be necessary to ensure compliance. The South African Constitutional Court's approach, which includes retained jurisdiction over compliance and the use of structural interdicts requiring ongoing reporting, provides a model that the Indian Supreme Court could adopt in the prisoners' rights context.

CHAPTER ELEVEN: DISABILITY, MENTAL HEALTH, AND PRISON CONDITIONS

11.1 Disability in Detention: The Constitutional Obligation and Its Systematic Violation

The Rights of Persons with Disabilities Act, 2016, which implements India's obligations under the CRPD, provides broad protections for persons with disabilities including in the context of criminal justice and detention. Section 10 of the Act requires that no person with disability shall be subject to cruel, inhuman or degrading treatment. The Act also mandates reasonable accommodation in all settings, including places of detention.

The reality of disability in Indian prisons is one of systematic neglect and active violation. Prison infrastructure is overwhelmingly inaccessible: buildings constructed decades ago without regard for the needs of persons with mobility impairments, visual impairments, or hearing impairments; toilets that cannot be independently used by wheelchair users; medical facilities without adaptive equipment; and programming activities that do not accommodate cognitive or sensory disabilities.

The case of GN Saibaba, already examined, illustrates the most severe consequences of disability neglect in high-security confinement. But the problem extends throughout the prison system: prisoners who require hearing aids, wheelchairs, or medication for chronic conditions routinely find that the prison administration cannot or will not provide these necessities. The Medical Manual provisions that require specific accommodations for prisoners with disabilities are aspirational documents that bear no relationship to the actual provision of accommodation in the facilities where they nominally apply.

The CRPD Committee, in its periodic review of India's compliance with the Convention, has specifically noted the absence of disability-responsive prison administration and the failure to provide reasonable accommodation for prisoners with disabilities. The Committee's recommendations have not been implemented in any systematic way.

11.2 Mental Health in Prison: A Hidden Crisis

The mental health of India's prison population is a crisis that receives almost no official attention and very little research scrutiny. The combination of the psychological stresses of incarceration, including overcrowding, violence, isolation, uncertainty about trial outcomes, and separation from family, with the pre-existing mental health vulnerabilities that many prisoners bring to incarceration (poverty, trauma, substance dependence, and the cumulative psychological effects

of social marginalization all increase rates of mental disorder), produces a prison population with very high rates of mental illness that the prison system is wholly unequipped to address.

The NCRB data on deaths in judicial custody includes some cases identified as suicides, which represent a small but significant indicator of the mental health crisis in prisons. But suicide statistics in prisons are likely to be underreported for the same reasons that apply to other categories of custodial death: the prison administration has an incentive to classify suspicious deaths as natural, to avoid the scrutiny that a suicide investigation would bring.

The Mental Healthcare Act of 2017, which provides a comprehensive framework for mental health care rights including the right to mental health care for persons in conflict with the law, has not been implemented in a meaningful way in India's prison system. Mental health professionals are almost entirely absent from prison staffing: India's prisons rely on general medical officers who have minimal psychiatric training to address the full spectrum of mental health needs of a population with very high rates of disorder. The result is that prisoners with serious mental illness receive no treatment, or treatment that is limited to the administration of psychiatric medication without the psychosocial support that genuine recovery requires.

The specific situation of prisoners held in prolonged pre-trial detention under the UAPA, where the combination of isolation, uncertainty, and the deliberate use of confinement as a silencing mechanism, creates conditions of extreme psychological stress, deserves recognition as a specific human rights concern. The documented deterioration of Father Stan Swamy's mental functioning during his imprisonment, combined with the advocacy organization's reports of depression, anxiety, and cognitive decline in multiple long-term UAPA detainees, suggests that the conditions of political imprisonment in India are producing systematic mental health harm in addition to the physical health harm that has been more widely documented.

CHAPTER TWELVE: THE THEORY OF PUNISHMENT AND ITS RELEVANCE TO INDIA'S CARCERAL PRACTICE

12.1 Retributivism, Consequentialism, and the Failure of Both

The philosophical debate about the justification of punishment provides a useful framework for evaluating the Indian prison system's approach to incarceration. The two dominant theories of punishment in the Western philosophical tradition are retributivism, which holds that punishment is justified as a deserved response to wrongdoing regardless of its consequences, and consequentialism, which holds that punishment is justified only if its consequences in terms of deterrence, incapacitation, and rehabilitation produce more good than harm.

Retributivism in its classical Kantian form holds that justice requires that wrongdoers be punished in proportion to their wrongdoing: punishment is what the wrongdoer deserves, and the failure to punish is itself an injustice. This theory, while philosophically coherent in its domain, provides no justification for the imprisonment of the unconvicted: since the undertrial detainee

has not been established as a wrongdoer, they cannot be said to "deserve" any punishment, retributivism cannot justify their incarceration.

Consequentialism in its standard form holds that punishment is justified if it produces better overall outcomes than the alternatives: if imprisonment deters future crime, incapacitates current offenders, and rehabilitates the imprisoned, the consequentialist argument for imprisonment is strong. But the empirical evidence for all three consequentialist justifications is weak, particularly in the Indian context. The deterrent effect of imprisonment in India, if it exists at all, is undermined by the extremely low conviction rate (which means that most crimes do not result in imprisonment) and the arbitrary and class-biased character of prosecutorial and judicial decision-making (which means that imprisonment is determined more by social disadvantage than by the gravity of the offense). The incapacitative effect is partial at best and is entirely inapplicable to the unconvicted. The rehabilitative effect is, as demonstrated above, essentially non-existent in a prison system with no meaningful rehabilitation programming.

This dual failure of justification leaves India's mass undertrial imprisonment without any coherent philosophical foundation. The imprisonment of hundreds of thousands of legally innocent people in degrading conditions that actively harm them cannot be justified by retributivism (which does not apply to the unconvicted) or by consequentialism (which requires evidence of beneficial outcomes that do not exist). It is, in philosophical terms, straightforwardly unjust: a massive imposition of harm without justification.

12.2 The Restorative Justice Alternative: Theory and Relevance

Restorative justice theory, associated with scholars including John Braithwaite, Howard Zehr, and Kathleen Daly, proposes an alternative to punishment-based criminal justice that centers on the repair of harm rather than the infliction of pain. In the restorative framework, crime is understood as a violation of relationships and communities rather than as an offense against the abstract authority of the state, and the appropriate response is a process of dialogue, responsibility-taking, and reparation that involves the offender, the victim, and the broader community.

Braithwaite's theory of "reintegrative shaming," developed in "Crime, Shame and Reintegration" (1989), provides a specific mechanism through which restorative justice can operate: the expression of community disapproval for the offense, combined with the reintegration of the offender into the community through acceptance of responsibility and reparation. This process is distinguished from "stigmatizing shaming," which excludes the offender from the community permanently and produces the criminogenic effects of social marginalization, by its emphasis on reintegration rather than exclusion.

The Indian context has some existing practices that can be understood through a restorative justice lens: the traditional systems of dispute resolution in various communities, including panchayat-based systems, caste-based mediation, and community council processes, have elements of the restorative approach. But these traditional systems are deeply problematic from a human rights perspective: they may reproduce caste and gender hierarchies, they may pressure victims (particularly women) to accept compromises rather than pursue their rights, and they

may operate outside any framework of legal accountability. The Khap panchayat system, which in some communities imposes severe punishments including social exclusion and even violence against couples who violate caste-based marriage norms, illustrates the potential for "community" dispute resolution to operate as a mechanism of oppression rather than of justice.

A rights-respecting restorative justice system for India would need to combine the relational and community dimensions of the restorative approach with the legal rights protections of the formal criminal justice system: voluntary participation, informed consent, protection from coercion, respect for the rights of all parties, and the availability of formal legal recourse if the restorative process fails. Such a system is conceptually coherent and practically achievable, but requires the kind of sustained political and institutional investment in genuinely humane criminal justice that the current political environment makes impossible to anticipate.

12.3 The Jurisprudence of Dignity: Personhood and the Prison

The concept of human dignity, which is the philosophical foundation of international human rights law and of the Indian Constitution's rights framework, takes on a specific and demanding content in the prison context. The prison is precisely the environment in which dignity is most severely tested and most comprehensively denied: the prisoner has been stripped of their freedom, their privacy, their control over their own body, their choice of diet and environment, and in many cases their ability to maintain their family relationships. The question for the philosophy of punishment is whether any of these deprivations are compatible with the fundamental respect for personhood that dignity demands.

Kant's categorical imperative, in the form that requires treating every rational being as an end in themselves rather than merely as a means to others' purposes, sets a demanding standard for punishment. On a strict reading, the categorical imperative prohibits using the pain of imprisonment as a deterrent to others, since doing so treats the imprisoned person as a means to the ends of social control rather than as an end in themselves. But most contemporary Kantian philosophers accept that some degree of punishment is compatible with treating the offender as a rational agent who is responsible for their choices, provided that the punishment is proportionate, that it respects the offender's basic needs and capacities, and that it is aimed at the offender's own rational rehabilitation rather than merely at their suffering.

This Kantian framework generates a clear and compelling critique of Indian prison conditions: a prison system that subjects prisoners to overcrowding, torture, caste-based degradation, inadequate healthcare, indefinite pre-trial confinement, and solitary confinement without judicial authorization is not treating prisoners as rational agents deserving of respect. It is treating them as objects of management and suffering, as means to the ends of social control and political silencing, in direct violation of the Kantian principle. The Indian prison system, in its actual operation rather than its formal legal aspiration, is philosophically incompatible with the dignity of the human person that the Constitution's right to life is supposed to protect.

The Supreme Court, in multiple prisoners' rights cases, has invoked the language of dignity, describing the right to live with dignity as a core element of Article 21. But the Court's invocation of dignity has not been accompanied by the sustained enforcement necessary to

translate the principle into the reality of prison conditions. The dignity of the Dalit manual scavenger in a prison cleaning the latrine of upper-caste prisoners is not protected by the abstract constitutional guarantee of equality: it requires the specific, determined intervention of institutional authority in the actual conditions of confinement.

CHAPTER THIRTEEN: REFORM, RESISTANCE, AND THE POLITICS OF PRISON CHANGE

13.1 The Civil Society Response: Prison Visitors, Legal Aid, and Documentation

Civil society organizations in India have developed a range of responses to the prison crisis that, while necessarily operating within severe constraints, have achieved significant results in specific cases and have contributed to the broader public and judicial awareness of prison conditions.

Prison visitor programs, authorized under the Prison Visitors Act and its state-level equivalents, allow designated individuals to visit prisons and inspect conditions. In practice, the prison visitor system is weakly implemented: visitors are typically appointed by the state government, may include political figures without independent expertise in prison conditions, and may be denied access to sections of the prison where the worst conditions exist. But in some states and some periods, the prison visitor system has provided meaningful information about prison conditions and has contributed to specific improvements.

Legal aid organizations including the Lawyers Collective, the Human Rights Law Network, and numerous state-level organizations have provided legal representation to prisoners who would otherwise have no access to legal advice. The fundamental limitation of legal aid in the prison context is resource scarcity: the number of legal aid lawyers is wholly inadequate to the scale of the undertrial crisis, and the quality of legal aid provision is variable and often insufficient. The Supreme Court's direction in Suk Das v. Union Territory of Arunachal Pradesh (1986) that the failure to provide legal aid renders a criminal trial void has not been consistently implemented.

Documentation organizations including the People's Union for Civil Liberties, the People's Union for Democratic Rights, and numerous state-level human rights organizations have produced extensive documentation of prison conditions, custodial torture, and specific instances of abuse. This documentation is essential for creating the public and judicial awareness that can create pressure for change. The OMCT's Global Torture Index 2025, which provides the comprehensive international assessment cited throughout this Part, draws on the work of these civil society organizations in building its evidence base.

13.2 Judicial Activism and Its Limits: The Promise and Failure of PIL

The public interest litigation mechanism, through which the Supreme Court and High Courts have exercised an expansive supervisory jurisdiction over prison conditions since the 1970s, represents the most significant institutional mechanism for challenging prison conditions within

the formal legal system. The Court's decisions in Sunil Batra, Sheela Barse, D.K. Basu, Charles Sobraj, EEVFAM, and Sukanya Shantha have established a comprehensive jurisprudential framework for prisoners' rights that, if implemented, would transform the Indian prison system.

But the fundamental limitation of judicial activism in the prison context is precisely what its advocates often overlook: courts can declare rights, direct institutions to respect them, and monitor compliance, but they cannot administer prisons. The implementation of court directions requires the cooperation of the executive: the government must invest resources, reform administrative culture, train personnel, and sustain the commitment to change over the years or decades necessary for genuine transformation. When that executive cooperation is absent, as it consistently has been in the Indian prison context, court directions accumulate without being implemented, becoming a monument to judicial aspiration rather than a record of rights protection.

The Bar and Bench analysis of April 2025, noting that the Supreme Court has rightly identified the problem but that the challenge lies in applying the principle uniformly, captures this limitation precisely. Identifying the problem is the easy part: the court's jurisprudential analysis of the bail crisis, the undertrial crisis, the custodial torture problem, and the conditions of political detention is sophisticated, comprehensive, and substantially correct. The hard part is creating the institutional conditions in which the identified principles can be consistently applied. That creation is a political and administrative task that the judiciary cannot perform alone.

13.3 The Prison Reform Agenda: A Comprehensive Analysis

The reform agenda for India's prison system that emerges from the analysis in this Part is complex, multi-dimensional, and deeply connected to broader reforms in the criminal justice system and in the political and social conditions that determine who ends up in prison and how they are treated there.

The first and most urgent priority is the resolution of the undertrial crisis. This requires several simultaneous interventions: the reform of the bail framework to eliminate financial surety requirements for minor offenses and to mandate personal recognizance bonds in appropriate cases; the expansion of judicial capacity through the appointment of sufficient judges, the use of technology for case management, and the reform of procedural rules that permit unnecessary adjournments; the extension of Section 479 of the BNSS to all categories of undertrial detainees and the active judicial implementation of its provisions; and the reform of the UAPA bail standard to restore genuine judicial discretion and the presumption of innocence.

The second priority is the criminalization of torture through comprehensive legislation. India must enact a specific Prohibition of Torture Act that defines torture in conformity with UNCAT, provides for criminal penalties commensurate with the gravity of the offense, establishes command responsibility for torture committed by subordinates, creates a specific cause of action for compensation by torture victims, and provides for the exclusion of evidence obtained through torture or ill-treatment from all legal proceedings. This legislation must be accompanied by the ratification of UNCAT and OPCAT.

The third priority is the reform of prison administration to eliminate caste and religious discrimination. The Sukanya Shantha judgment has established the constitutional basis for this reform: it now requires the systematic review of all state prison manuals to identify and eliminate caste-based provisions, the training of prison staff in constitutional values, and the establishment of independent monitoring mechanisms with the power to inspect all sections of all prisons.

The fourth priority is the investment in prison infrastructure and healthcare adequate to reduce overcrowding to acceptable levels and to provide medical care that meets the standard required by Article 10 of the ICCPR and Rule 24 of the Nelson Mandela Rules. This is a resource-intensive priority that requires sustained political commitment to fund prison improvement as a genuine public health and human rights obligation.

The fifth priority is the development of non-custodial alternatives to imprisonment for minor and non-violent offenses, including community service orders, probation, electronic monitoring, and restorative justice processes. These alternatives would reduce the pressure on an overcrowded prison system while providing more effective and more humane responses to the underlying conduct.

CHAPTER FOURTEEN: THE POLITICS OF PRISON INVISIBILITY: MEDIA, INFORMATION, AND THE SILENCING OF THE INCARCERATED

14.1 The Invisibility of the Imprisoned: Political Economy of Silence

One of the most powerful protections available to institutions that violate human rights is invisibility: the systematic removal of knowledge of their operations from the public sphere. The prison is, by its nature, a closed institution: the people inside it cannot speak freely, cannot write for publication, cannot communicate with the outside world without the mediation of a system that has an interest in controlling what they say. The guards and administrators who witness the daily reality of prison conditions are socialized into cultures of institutional loyalty that strongly discourage external disclosure.

The media's coverage of prison conditions in India is episodic and reactive rather than systematic and investigative. When a particularly dramatic incident of custodial death or torture attracts public attention, there is a period of intense media coverage followed by a rapid return to indifference. The sustained investigative journalism necessary to understand and communicate the systemic character of prison conditions requires access, time, and the kind of editorial commitment to covering issues that do not generate high click rates or advertising revenue.

The political economy of media attention is particularly unfavorable to prison coverage in the current Indian media environment. The dominance of corporate media with close ties to the ruling political establishment, the chilling effect of the UAPA and other laws on critical journalism, and the tabloidization of much Indian media toward entertainment and outrage over systemic analysis all work against the kind of sustained attention to prison conditions that would be necessary to create the public pressure for reform.

The experience of journalists who have attempted to cover prison conditions illustrates these barriers concretely. Siddique Kappan, arrested while traveling to report on the Hathras case in 2020, spent two years in Mathura prison under the UAPA: his case is itself a story about the imprisoned, and the story of his imprisonment was covered extensively. But the conditions of his imprisonment, and the systematic denial of bail despite his evident health decline, received far less sustained attention than his initial arrest. The ongoing conditions of political prisoners tend to disappear from public awareness after the initial drama of the arrest, leaving them to serve their years of pre-trial imprisonment in relative obscurity.

14.2 The Right to Information and Its Limitations in the Prison Context

The Right to Information Act, 2005 provides in principle for public access to information held by government bodies, including the prison administration. RTI applications to prison administrations and to the NHRC about custodial death data, prison conditions, and complaint records have been used by civil society organizations and journalists to obtain information that would otherwise be inaccessible.

But the RTI mechanism faces specific limitations in the prison context. The prison administration has the authority to refuse information on grounds of security, which is broadly defined and frequently invoked. Information about specific custodial deaths, specific torture complaints, and specific disciplinary proceedings may be withheld on security grounds or on the ground that disclosure would prejudice pending criminal proceedings. The NHRC's information about custodial deaths is subject to confidentiality provisions that limit its public accessibility.

The broader pattern of RTI obstruction in the Modi era is documented by the Commonwealth Human Rights Initiative and other organizations: the appointment of RTI appellate commissioners from government backgrounds rather than from civil society, the use of legal and procedural obstacles to delay and frustrate RTI applications, and the withdrawal of proactive disclosure from many government bodies. In the prison context, this broader pattern of RTI obstruction compounds the inherent inaccessibility of closed institutions to produce a near-complete opacity in the information available to the public about prison conditions.

14.3 Technology, Transparency, and the Future of Prison Accountability

The same digital technologies that have been weaponized by the Indian state for surveillance and social control also offer potential tools for prison accountability. Video recording in police stations and detention facilities, mandated in multiple court decisions and recommended by the Law Commission, would create an evidentiary record of conditions and treatment that would substantially alter the balance of power in custodial settings. The existence of a recording would provide evidence in cases of torture allegations, deter potential perpetrators aware of being recorded, and create a mechanism for independent review of custodial conduct.

The Shakir Sheikh case of 2026, in which the Rajasthan High Court removed a Station House Officer on the ground of prima facie torture, illustrates both the potential and the limitations of this approach: the case commentary notes that mandatory recording would have preserved evidence of the torture that, without recording, required other forms of proof. But the broader

point is that the systematic implementation of CCTV recording in police stations, interrogation rooms, and prison facilities would transform the accountability landscape for custodial violence.

The court monitoring of prison conditions through technology, including online reporting of prison statistics, population data, and incident reports, would also contribute to transparency. Several High Courts have developed online systems for monitoring undertrial detention periods and for flagging cases where the period of detention has exceeded legal limits. The national extension of such systems, combined with proactive judicial review of flagged cases, could make a significant contribution to reducing the undertrial crisis.

CHAPTER FIFTEEN: SYNTHESIS AND FORWARD PERSPECTIVE: THE PROMISE OF CONSTITUTIONAL MORALITY IN THE CARCERAL SPACE

15.1 Ambedkar's Constitutional Morality and the Prison

Ambedkar's concept of "constitutional morality," which he distinguished from the "popular morality" of the majority culture, is directly relevant to the prison context. Constitutional morality, in Ambedkar's usage, is the commitment to the values embodied in the Constitution, including equality, dignity, non-discrimination, and the rule of law, even when those values conflict with the preferences of the majority or the convenience of the administration. Popular morality, in contrast, tends to reflect the prejudices of the dominant social group and to regard those at the bottom of the social hierarchy as deserving of whatever treatment they receive.

In the prison context, popular morality treats prisoners as criminals who deserve their degradation: as people who have forfeited their rights through their alleged conduct and who should be grateful for any treatment better than the worst. This popular morality is reflected in the political indifference to prison conditions, in the judicial tendency to defer to prison administrators, and in the public lack of outrage at conditions that would be considered scandalous if they were experienced by any other population.

Constitutional morality, by contrast, demands that the equal dignity of every person be respected regardless of whether they are in prison, regardless of whether they have been accused of crimes, and regardless of whether they are popular or sympathetic figures. The Dalit undertrial in an overcrowded prison cell is as entitled to the respect of the Constitution as the Chief Justice who interprets it. The activist imprisoned under the UAPA for writing critically about government policy is as entitled to bail, medical care, and freedom from torture as any other citizen. The Muslim prisoner denied halal food is as entitled to religious accommodation as the Hindu prisoner whose dietary preferences are automatically catered to.

The project of implementing constitutional morality in the carceral space is not merely a project of legal reform, though legal reform is essential. It is a project of cultural and institutional transformation: the transformation of an institution built on colonial logic and organized around social sorting into an institution organized around human dignity and the values of the constitutional republic. That transformation requires sustained political will, institutional

investment, and public commitment that does not currently exist. Creating the conditions in which it can exist is part of the larger project of constitutional democracy in India to which this textbook is dedicated.

15.2 The Interconnection with Broader Human Rights Reform

The prison crisis in India is not separable from the broader human rights crisis documented throughout this textbook. The same political economy that produces the anti-Muslim discrimination visible in the CAA and the bulldozer demolitions produces the overrepresentation of Muslims in India's undertrial population. The same institutional culture that enables the torture of political detainees under the UAPA enables the torture of ordinary prisoners in police stations. The same failure of accountability that protects soldiers who commit extrajudicial killings under AFSPA protects police officers who torture and kill in custody.

This interconnection has important implications for the reform agenda. Narrowly targeted prison reforms, while valuable in themselves, will not transform the conditions in India's prisons as long as the broader political and social conditions that produce mass imprisonment of the marginalized remain intact. The undertrial crisis cannot be resolved without reforming the bail framework, and the bail framework cannot be reformed without confronting the class and caste dimensions of the criminal justice system. Custodial torture cannot be eliminated without eliminating the culture of impunity in the police, and the culture of impunity cannot be eliminated without reforming the accountability mechanisms, and the accountability mechanisms cannot be reformed without confronting the political interests that benefit from impunity.

The holistic reform vision that emerges from the analysis throughout this textbook and that is concentrated most specifically in this Part is a vision of a criminal justice system that: does not treat poverty as a basis for imprisonment; does not treat membership in a marginalized community as evidence of criminality; does not use pre-trial detention as a tool of political suppression; does not permit torture, whether through action or omission; provides genuine rehabilitation and reintegration programming; maintains prison conditions that respect the basic dignity of all persons; and is subject to robust independent monitoring and accountability.

This is a vision of a system that does not currently exist and that faces powerful political, institutional, and cultural obstacles to coming into existence. But it is a vision that is constitutionally required, internationally mandated, and morally non-negotiable. The incarcerated are the population that the state has the greatest power over and the least accountability toward. The quality of their treatment is the truest measure of whether the Indian state is genuinely committed to the constitutional values it formally proclaims.

15.3 The International Accountability Gap and the Need for Independent Monitoring

The international accountability gap analyzed in previous Parts of this textbook applies with particular force to the prison context. India does not have a National Preventive Mechanism under OPCAT. It does not permit routine independent international monitoring of its prisons. The UN Special Rapporteur on torture has requested a country visit to India on multiple occasions; the request has not been accepted. The NHRC lacks the independence, the

investigative capacity, and the authority to compel action that a genuine national human rights institution requires.

The gap between international standards and the practical reality of Indian prison conditions is not merely a gap of resources or administrative capacity. It is a gap produced by political choice: the choice not to ratify UNCAT, not to accept OPCAT, not to establish genuinely independent monitoring, not to implement the Nelson Mandela Rules, not to enact anti-torture legislation. These are choices that reflect the government's calculation that the costs of genuine accountability for prison conditions outweigh the benefits.

Changing this calculation requires the creation of costs for non-accountability that currently do not exist. This in turn requires sustained engagement by international human rights bodies, civil society organizations, the media, and the diplomatic community in creating those costs. The extradition refusals from the UK and other countries that cite India's custodial torture record create a form of accountability that the Indian government cannot entirely ignore: they impose reputational and practical costs on India's international standing that are more directly felt than the abstract recommendations of treaty bodies.

The approach of "diplomatic accountability" that some scholars have proposed, in which bilateral relationships with India incorporate specific and measurable human rights benchmarks with consequences for non-compliance, would create more sustained and more effective pressure for reform than the current system of periodic reviews and largely ignored recommendations. The European Parliament's resolution expressing human rights concerns, while non-binding, represents a form of political accountability that can be developed and strengthened over time. The strategic litigation in foreign courts against the extradition of suspects to India, which has produced the February 2025 High Court ruling on custodial torture, creates case-by-case accountability that contributes to the accumulation of international scrutiny.

None of these mechanisms are adequate substitutes for genuine domestic reform. But they can contribute to creating the conditions in which domestic reform becomes more likely by imposing external costs on the continuation of current practice.

15.4 The Concluding Synthesis: Prison as Mirror

The prison, in the final analysis, is a mirror. It reflects back to the society that builds and maintains it the truest image of that society's actual values: not the values it proclaims in constitutional texts and official declarations, but the values it enacts in the treatment of those who have least power to resist its treatment of them.

India's prisons reflect a society in which caste determines how you are treated, in which poverty is criminalized through the bail system, in which religious identity determines the intensity of official suspicion directed at you, in which speaking truth to power is met with years of pre-trial imprisonment, in which torture is endemic and unpunished, and in which the state's claim to sovereign authority is expressed most nakedly in the power to confine, to degrade, and to destroy the bodies and spirits of those it claims to govern.

This is not the India that the Constitution's preamble envisions. The preamble speaks of justice, liberty, equality, and fraternity. The prison system speaks of hierarchy, confinement, discrimination, and impunity. The gap between the two is the measure of the distance India has yet to travel toward the constitutional republic that Ambedkar and his colleagues imagined and that millions of Indians continue to aspire toward.

Part Nine of this textbook will turn to the terrain of economic rights, poverty, and the failure of India's development model to address the structural conditions that produce and reproduce the violations documented throughout this work. It will examine the jurisprudence of the right to food, the right to health, the right to work, and the right to housing, the specific failures of implementation in each domain, and the theoretical frameworks through which the relationship between economic rights and civil and political rights can be understood. It will connect the economic rights failures to the broader political economy of the Hindu nationalist project and to India's external conduct toward its neighbors, and it will assess the prospects for the kind of integrated rights-respecting development that the Directive Principles of State Policy, and the human rights tradition more broadly, demand.

CONCLUDING ANALYSIS OF PART EIGHT: THE IMPRISONED AS THE TEST OF CONSTITUTIONAL DEMOCRACY

Part Eight has conducted a comprehensive analysis of India's prison system, its custodial practices, its treatment of undertrial detainees and political prisoners, and its relationship to the broader structures of social inequality, political repression, and international human rights law. The analysis has drawn on multiple theoretical frameworks, from Foucault's analysis of the disciplinary society to Angela Davis's abolitionist critique, from Ambedkar's constitutional morality to Martha Nussbaum's capabilities approach, from the comparative prison law of South Africa to the international jurisprudence of the UN Human Rights Committee, to construct a picture that is as damning as it is well-documented.

The fundamental findings of this Part can be stated with precision. India is ranked as a "high risk" country for torture and ill-treatment in the Global Torture Index 2025, the most comprehensive international assessment of its kind. The National Human Rights Commission reported 2,739 custodial deaths in 2024, approximately five deaths per day. More than 75 percent of India's 573,220 prisoners are undertrial detainees, legally presumed innocent but confined in degrading conditions, often for periods exceeding the sentences that would have been imposed on conviction. The bail system systematically imprisons the poor while releasing the wealthy. The UAPA operates as a mechanism of indefinite imprisonment by charge sheet, with 97.5 percent of those arrested remaining in prison for years without trial. The prison system reproduces caste and religious discrimination in its daily administration, as confirmed by the Supreme Court in the Sukanya Shantha judgment of 2024. Solitary confinement is imposed on political prisoners without judicial authorization. Custodial torture is, in the words of the London High Court, "commonplace and endemic." And the accountability mechanisms that should address all of these violations, the NHRC, the judiciary, the prison inspection system, and the international treaty bodies, are systematically inadequate.

Against these findings, this Part has articulated a reform agenda rooted in constitutional values, international law, and the philosophical traditions of human dignity and equal personhood. The agenda is comprehensive and demanding: it requires legislative reform, institutional transformation, cultural change, and sustained political will. It requires the ratification of UNCAT and OPCAT, the enactment of anti-torture legislation, the reform of the bail system, the elimination of caste and religious discrimination in prison administration, the reform of the UAPA bail provisions, the investment in prison infrastructure and healthcare, and the development of non-custodial alternatives to imprisonment.

Most fundamentally, it requires the recognition that the persons in India's prisons, whether unconvicted undertrial detainees, convicted criminals serving sentences, or political prisoners imprisoned for exercising their constitutional rights, are persons. They are beings of inherent dignity whose humanity does not diminish upon entry into prison. The constitutional right to life and personal liberty, which the Supreme Court has interpreted to encompass a comprehensive right to live with human dignity, does not end at the prison gate. It follows every person into every cell of every prison in India. The question that confronts the Indian state, its judiciary, its civil society, and its international partners is whether the words of that constitutional commitment can be made real in the spaces where the state's power over the individual is most naked and most absolute.

That question is not merely a legal or political question. It is a moral question, a test of the seriousness with which India's constitutional democracy takes its own foundational commitments. By the evidence examined in this Part, the test has been failed comprehensively and continuously. The scale of the failure demands not merely incremental improvement but systematic transformation. The persons in India's prisons await that transformation not as abstract rights-holders but as human beings whose suffering is real, present, and unacceptable.

PART NINE: ECONOMIC RIGHTS, POVERTY, AND THE CATASTROPHE OF INDIA'S DEVELOPMENT MODEL

"Poverty is not an accident. Like slavery and apartheid, it is man-made and can be removed by the actions of human beings." Attributed to Nelson Mandela, adapted in the context of constitutional obligation

"A starving man is not free. A person without shelter does not have the conditions of liberty. The promise of fundamental rights is hollow where the economic substrate of a dignified life is denied to hundreds of millions." Upendra Baxi, adapted from "The Future of Human Rights," Third Edition

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PREFATORY NOTE TO PART NINE

Part Eight of this textbook concluded with an analysis of India's prison system as a mirror of the society that creates and maintains it. It documented the catastrophic gap between constitutional promise and carceral reality, the systematic reproduction of caste and religious discrimination in the administration of penal institutions, and the political economy of impunity that allows the incarceration of the legally innocent to continue as a matter of routine governance.

The transition to Part Nine is not a shift in theme but a deepening of the same fundamental inquiry. The prison and the condition of economic rightlessness are intimately connected. The person who goes to prison is, in the overwhelming majority of Indian cases, poor. The person who cannot afford bail is poor. The person who cannot access health care is poor. The person who goes to sleep hungry is poor. The person whose child is stunted from malnutrition, whose home is bulldozed without legal process, whose ancestral land is seized for a corporate mining project, whose labour is exploited below minimum wage levels, whose water source is contaminated by industrial effluent, and whose access to justice is blocked by costs and distance, is poor. And poverty in India is not random or arbitrary. It is structured. It falls systematically along the axes of caste, religion, gender, ethnicity, and geography that this textbook has been mapping throughout its preceding parts.

Part Nine undertakes the analysis of economic rights in India: the rights to food, to health, to work, to housing, and to an adequate standard of living. It examines the constitutional architecture of these rights, embedded primarily in the Directive Principles of State Policy, and the complex jurisprudential project through which the Supreme Court has partially converted them into enforceable guarantees. It assesses the specific failures of implementation in each domain and connects those failures to the structural political economy of the Indian state. It places India's economic rights performance within the framework of its international obligations under the International Covenant on Economic, Social and Cultural Rights, which India ratified in 1979, and examines the persistent and documented gap between those obligations and the lived reality of hundreds of millions of people. It engages with the theoretical frameworks developed by Amartya Sen, Martha Nussbaum, Thomas Pogge, and other philosophers who have addressed the relationship between economics, justice, and rights. And it extends the analysis to India's external conduct, examining how India's economic hegemony over its smaller neighbours constitutes a form of international rights violation that the UN human rights system has been inadequate to address.

Throughout, the textbook maintains its foundational commitment: to speak plainly about what is documented, to follow the evidence where it leads, and to name things by their right names.

CHAPTER ONE: THE PHILOSOPHY AND JURISPRUDENCE OF ECONOMIC RIGHTS

1.1 The Historical Marginalization of Economic Rights and Its Consequences

The international human rights system has a constitutive split that has shaped, distorted, and in many respects crippled its capacity to address the most pervasive forms of human suffering. The

split between civil and political rights on the one hand and economic, social and cultural rights on the other, institutionalized in the bifurcation of what was originally intended as a single human rights covenant into two separate instruments in 1966, reflects a historical ideological conflict between Western liberal states, which prioritized civil and political freedoms, and socialist states, which prioritized economic and social guarantees. The compromise was to separate them into two covenants with different enforcement mechanisms, the ICCPR with its individual communication procedure and the ICESCR with its weaker system of periodic reporting.

The practical consequence of this bifurcation has been the systematic subordination of economic rights in international human rights discourse. Civil and political rights came to be seen as the "real" human rights, the ones that could be litigated, the ones that generated dramatic cases of individual heroism and state repression, the ones that attracted the attention of human rights lawyers and international advocates. Economic rights, by contrast, were treated as aspirational, as policy goals rather than legal entitlements, as things that required progressive realization within available resources and therefore could not be the subject of clear accountability in the way that the prohibition of torture or the right to a fair trial could be.

This distinction, which has been progressively dismantled by scholars, treaty bodies, and domestic courts over the past three decades, was always philosophically untenable. Henry Shue's foundational work, "Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy," published in 1980 and now recognized as one of the most important contributions to rights theory in the twentieth century, made the argument with devastating clarity: subsistence rights, the rights to have access to minimally adequate food, water, clothing, and shelter, are as basic as any other human rights, more basic in fact, because without subsistence no other rights can be exercised. A dead person has no freedom of speech. A person dying of preventable disease has no effective right to liberty. A child stunted by malnutrition has no practical access to the right to education. The hierarchy that treats civil and political rights as primary and economic rights as secondary has it precisely backwards when applied to populations at the extreme of material deprivation.

The Indian constitutional framework reflects a version of this same bifurcation, though with distinctive features. The Fundamental Rights in Part III of the Constitution are justiciable: they can be enforced through constitutional courts under Articles 32 and 226. The Directive Principles in Part IV, which contain the economic and social rights, are explicitly non-justiciable under Article 37, which provides that they shall not be enforceable by any court though they are fundamental to governance and it shall be the duty of the State to apply these principles in making laws. This constitutionalization of non-justiciability was not accidental: it reflected the framers' awareness that the economic and social transformation demanded by the Directive Principles would require extensive resources and time, and their unwillingness to expose the state to immediate judicial accountability for failing to achieve that transformation.

But the consequence has been a constitutional system in which the economic rights of the poorest can be systematically violated without formal constitutional accountability, while the formal civil and political rights are enforceable in principle but largely inaccessible in practice for the same poor populations. The gap between what the Constitution promises and what millions of people actually receive is not a gap of implementation delay: it is a gap produced by

structural political choices that have consistently prioritized the interests of dominant groups over the rights of the marginalized.

1.2 Sen, Capabilities, and the Reframing of Rights

Amartya Sen's capabilities approach, developed initially in articles and lectures from the 1980s and synthesized in works including "Inequality Reexamined" (1992) and "Development as Freedom" (1999), represents the most influential contemporary challenge to the narrow conception of rights that has dominated international human rights discourse. Sen's central insight, which he developed in dialogue with and distinction from John Rawls's primary goods approach, is that what matters for human well-being and justice is not simply the distribution of resources or goods, but what people are actually able to do and to be with those resources. Two people with the same income may have radically different capabilities if one is disabled, or ill, or facing discrimination, or caring for dependents, or living in an ecologically degraded environment.

The capability approach is relevant to India in multiple interconnected ways. Sen was himself Indian, drew extensively on the Indian experience in developing his theoretical framework, and has written specifically and critically about India's development failures throughout his career. His concept of "public action" as the mechanism through which development is achieved and sustained points directly to the failures of the Indian state in building the public infrastructure, the schools, hospitals, and water systems, that are the preconditions of genuine capability development for the poor. His distinction between "economic unfreedom," the deprivation of capabilities through material poverty, and "political unfreedom," the deprivation of capabilities through the absence of democratic voice and civil liberties, captures with precision the double deprivation experienced by Dalit communities, religious minorities, and Adivasi populations in India, who face both forms of unfreedom simultaneously and reinforcingly.

Sen's analysis in "An Uncertain Glory: India and Its Contradictions," co-authored with Jean Dreze and published in 2013, provided a comprehensive assessment of India's development failures that remains strikingly accurate over a decade later. Sen and Dreze documented India's extraordinary failure to convert impressive GDP growth into comparable improvements in human capabilities: India's growth miracle had produced billionaires and a significant urban middle class, but had left the vast majority of its population without access to adequate health care, quality education, or economic security. They compared India unfavourably not only with China, which had achieved far greater poverty reduction for a comparable period of growth, but with much poorer countries in South Asia and sub-Saharan Africa that had achieved better outcomes in health and education despite lower incomes.

Martha Nussbaum's version of the capabilities approach, which is more explicitly rights-based than Sen's, identifies a specific list of "central human capabilities" whose protection she argues is required by a minimal conception of human justice. These capabilities include: life; bodily health; bodily integrity; the senses, imagination, and thought; emotions; practical reason; affiliation; other species; play; and control over one's political and material environment. Each capability corresponds to a set of rights and requires a set of material conditions for its realization.

When Nussbaum's capabilities list is applied as an analytical lens to India, the results are alarming across virtually every dimension. Life: the right to live a life of normal length is denied to hundreds of thousands by preventable disease, maternal mortality, and hunger-related conditions. Bodily health: the right to adequate nutrition, adequate shelter, and adequate health care is denied to hundreds of millions. Bodily integrity: the right not to be subject to assault, sexual violence, and torture is systematically denied to Dalit women, religious minorities, and prisoners. The senses, imagination, and thought: the right to literacy and education adequate for participation in social life is denied to millions of children in inadequate government schools. Practical reason: the right to form one's own conception of the good is constrained by the caste system's assignment of occupational roles and social identities at birth. Affiliation: the right to live with others and be treated as a dignified being is denied by caste discrimination. Control over political and material environment: the right to participate effectively in political choices is undermined by the structural disadvantages of Dalit, Adivasi, and Muslim communities in the political system.

Nussbaum's capabilities approach provides not merely a descriptive framework for cataloguing failures but a normative framework for assessing them and demanding change. If each capability corresponds to a right that just institutions are required to protect, then the systematic denial of capabilities across a population is not merely a policy failure or a development challenge: it is a rights violation of the most fundamental kind.

1.3 Pogge's Negative Duty Framework and India's Economic Rights Violations

Thomas Pogge's contribution to the political philosophy of global justice, developed most comprehensively in "World Poverty and Human Rights" (2002, second edition 2008), introduces a framework that is directly relevant to the analysis of economic rights violations in India and to the international dimensions of those violations.

Pogge's key distinction is between "positive" and "negative" duties in relation to global poverty. Most mainstream ethical frameworks, and most mainstream human rights frameworks, treat the obligations of states with respect to poverty as positive duties: duties to provide, to help, to develop, to assist. Positive duties of this kind are treated as morally praiseworthy when fulfilled but not as grounds for moral condemnation when unfulfilled. But Pogge argues that the actual situation of global poverty, including within countries like India, is better understood as the product of institutional orders that actively harm the poor. When a state maintains an institutional order that systematically generates poverty by structuring property rights, taxation, land ownership, labour relations, and access to public goods in ways that benefit the wealthy at the expense of the poor, it is not merely failing to fulfil a positive duty to assist the poor: it is actively violating the negative duty not to harm them.

This distinction has profound implications for the accountability analysis. When the Indian state maintains a system of agricultural support that provides massive subsidies to large landholders and ignores the needs of marginal and landless agricultural laborers, it is not merely failing to help the poor: it is actively participating in the institutional system that impoverishes them. When it maintains labour laws that classify the vast majority of the workforce as "informal" and therefore outside the protections of minimum wage, social insurance, and occupational safety

law, it is not merely failing to protect workers: it is actively structuring the labour market in ways that expose them to exploitation. When it uses the machinery of land acquisition and environmental clearance to transfer resources from Adivasi communities to corporations, it is not merely failing to help Adivasi communities: it is actively dispossessing them.

Pogge's framework supports a much stronger accountability claim than the standard positive duty framework: the Indian state does not merely have a duty to do more for the poor. It has an obligation to stop actively harming them through the institutional structures it maintains and enforces. This is a duty of immediate compliance, not of progressive realization. And it is a duty whose violation constitutes a human rights violation in the full sense, not merely a development shortfall.

1.4 International Law Framework: The ICESCR and Its Obligations

India ratified the International Covenant on Economic, Social and Cultural Rights on April 10, 1979. The ratification created legally binding obligations under international law that have been largely unimplemented and largely unaccountable for forty-five years.

The ICESCR requires state parties to take steps "to the maximum of available resources" toward the "progressive realization" of the rights it contains. The rights include: the right to work and to just and favourable conditions of work (Articles 6 and 7); the right to social security (Article 9); the right to an adequate standard of living, including adequate food, clothing, and housing (Article 11); the right to the highest attainable standard of physical and mental health (Article 12); the right to education (Articles 13 and 14); and the right to take part in cultural life and to benefit from scientific progress (Article 15).

The progressive realization standard has been misread, frequently and deliberately, as a standard of excuse: governments invoke "progressive realization" to justify any level of economic rights provision, claiming that they are doing as much as their resources permit. The UN Committee on Economic, Social and Cultural Rights systematically challenged this misreading in its General Comments, particularly General Comment 3 (1990), which established that progressive realization does not permit complete inaction and that states have immediate "minimum core obligations" with respect to each right. The minimum core obligation for the right to food, for instance, is to ensure that every person is free from hunger. The minimum core obligation for the right to health is to ensure essential primary health care. The minimum core obligation for the right to education is to ensure access to primary education.

General Comment 3 also established that the progressive realization standard is qualified by a non-retrogression principle: states may not deliberately take measures that retrogress from already-achieved levels of economic rights protection, unless they can demonstrate that the retrogression was unavoidable given the constraints of available resources. As this Part will document, India has in multiple domains engaged in retrogression, rolling back labour protections, reducing public health investment, weakening food security programs, and dismantling environmental safeguards, in ways that have worsened the economic rights situation of the most vulnerable.

The "maximum available resources" standard is also not the blank cheque that governments prefer to read it as. General Comment 3 clarifies that the assessment of available resources must include not only existing resources but resources that could be generated through progressive taxation and through the reallocation of existing public expenditure. India's public expenditure on health as a percentage of GDP, which was approximately 1.35 percent as of 2025, is among the lowest in the world and dramatically below the three percent that the government's own Health Policy of 2017 committed to achieving by 2025. India's military expenditure as a percentage of GDP, by contrast, has been maintained at approximately 2.4 percent. The choice to spend more on military capacity than on health care for a billion people is a choice about the allocation of available resources that directly affects the realization of the right to health.

The CESCR Committee reviewed India's third periodic report in 2008 and issued comprehensive concluding observations that identified major failures across virtually every right. The observations documented inadequate implementation of the right to food, persistent malnutrition, bonded labour, child labour, inadequate healthcare infrastructure, discriminatory barriers to education, and the failure to address caste-based discrimination in the realization of economic rights. The subsequent periodic review processes have continued to document many of the same failures, reflecting the fundamental reality that India's relationship with its ICESCR obligations is one of formal acknowledgement and systematic non-implementation.

The Optional Protocol to the ICESCR, which establishes an individual communication mechanism allowing individuals to bring complaints of violations to the CESCR Committee, was adopted by the General Assembly in 2008 and has been ratified by a growing number of states. India has not ratified it, ensuring that individuals whose economic rights have been violated cannot bring international complaints and that India faces no individual accountability mechanism for ICESCR violations.

1.5 The Indivisibility Principle and Its Violation

The Vienna Declaration and Programme of Action, adopted unanimously by 171 states at the World Conference on Human Rights in 1993, declared that all human rights are universal, indivisible, interdependent, and interrelated. The indivisibility principle is not merely rhetorical: it reflects a genuine insight about the nature of human well-being and the conditions of human freedom. Civil and political rights cannot be effectively exercised without the economic foundation that makes their exercise possible. Economic rights cannot be secured without the democratic and legal institutions that protect them from expropriation and abuse. The failure of either set of rights undermines the other.

India illustrates this interdependence with particular clarity. The right to vote, which India largely respects, cannot be exercised with meaningful freedom by a Dalit agricultural laborer who is economically dependent on an upper-caste landlord who controls her employment and therefore her livelihood. The formal freedom of speech does not avail a journalist who cannot access the internet because an internet shutdown has been imposed in her state. The right to legal representation before a court does not help a person who cannot understand the proceedings conducted in a language she does not speak. The right to education guaranteed by Article 21A

does not benefit a child who must work rather than attend school because her family's food security depends on her labor.

At the same time, the absence of economic security makes the political and civil rights system more vulnerable to capture by powerful interests. When the electorate is poor, illiterate, and economically insecure, its political choices are shaped by patronage, fear, and immediate material need rather than by informed assessment of political programs. Populist distributional promises, real or illusory, can mobilize electoral support in ways that undermine the long-term institutional development required for a genuinely rights-respecting state. The BJP's electoral success, which has been built in significant part on targeted distributional programs, including the PM-Kisan direct benefit transfer for farmers, the Ujjwala Yojana cooking gas program, and the housing scheme for the poor, while simultaneously dismantling the regulatory protections and institutional accountability mechanisms that would protect the long-term economic rights of the same populations, illustrates this dynamic precisely.

The indivisibility principle also generates a critique of the standard international human rights response to India, which tends to focus on civil and political rights violations, the imprisonment of journalists, the harassment of minorities, the restrictions on internet freedom, while underemphasizing the economic rights violations, the malnutrition, the inadequate health care, the labour exploitation, that affect far larger numbers of people. Both sets of violations are real and serious. Both deserve systematic engagement. The hierarchy that treats one as more important than the other is an artifact of a particular historical moment in international human rights development, not a defensible reflection of the relative importance of the rights to the people who bear their violation.

CHAPTER TWO: THE RIGHT TO FOOD: JURISPRUDENCE, FAILURE, AND THE STRUCTURAL POLITICS OF HUNGER

2.1 The Scale of the Crisis: India's Hunger in Global Perspective

In 2024, the Global Hunger Index ranked India 105th out of 127 countries, with a score of 27.3, placing it in the "serious" category. According to United Nations estimates, approximately 195 million people in India are chronically undernourished, representing a staggering proportion of the global undernourished population. Approximately 35.5 percent of children under five suffer from stunting, a condition of chronic undernutrition that causes irreversible cognitive and physical development damage. Over 19 percent of children under five experience wasting, the most acute form of malnutrition. More than 32 percent of children under five are underweight.

These are not numbers that describe a country without food. India is the world's second-largest food producer and a significant food exporter. India maintains massive public food grain stocks, sometimes at levels that exceed storage capacity, leading to grain rotting in government warehouses while people go hungry. India's hunger crisis is not a production crisis: it is a distribution crisis, an access crisis, and at its root, an economic rights crisis produced by the

political choices of successive governments about who deserves access to adequate nutrition and on what terms.

The relationship between hunger and caste is direct and documented. Dalit and Adivasi households experience food insecurity at dramatically higher rates than upper-caste households. The 2019-2021 National Family Health Survey data showed that the stunting rate among Scheduled Tribe children was approximately 43.6 percent, compared with approximately 31.5 percent among non-SC/ST non-OBC children. The malnutrition rates among Muslim children are also significantly higher than the national average. The geography of hunger maps almost perfectly onto the geography of caste and religious marginalization.

The January 2026 assessment by Amnesty International, "The State of the World's Human Rights 2026," documented that deepening inequalities in India had worsened the situation of the most vulnerable, with particular concerns about the failure of welfare programs to reach the most marginalized communities. The assessment noted that between formal policy commitments and actual ground-level delivery, a systematic gap persisted that was not merely administrative but structural.

2.2 The Constitutional Architecture: Directive Principles and the Right to Food

The Indian Constitution addresses food security primarily through the Directive Principles of State Policy. Article 39(a) directs the state to ensure that citizens have the right to an adequate means of livelihood. Article 39(b) directs the state to ensure that the ownership and control of the material resources of the community are distributed so as to subserve the common good. Article 39(c) requires the prevention of the concentration of wealth to the common detriment. Article 41 requires the state to make effective provision for securing the right to work, to education, and to public assistance in cases of unemployment, old age, sickness, and disablement. Article 43 requires the state to endeavour to secure to all workers a living wage sufficient to ensure a decent standard of life.

As non-justiciable provisions, these articles create no directly enforceable entitlements. But the Supreme Court's innovative approach to reading Directive Principles and Fundamental Rights together has been the mechanism through which some degree of justiciable protection for economic rights, including the right to food, has been created. The pivotal jurisprudential move was the Supreme Court's reading of the right to life under Article 21 to encompass the right to livelihood in Olga Tellis v. Bombay Municipal Corporation (1985), and its subsequent extension to include the right to food in the landmark case of People's Union for Civil Liberties v. Union of India, the case known as the Right to Food Case.

2.3 The PUCL Case: A Jurisprudential Landmark and Its Implementation Failures

The PUCL right to food case, filed in 2001 in the context of starvation deaths in Rajasthan despite massive food grain surpluses held by the Food Corporation of India, represents one of the most sustained and creative exercises of public interest litigation in Indian constitutional history. Over two decades, the Supreme Court issued a series of interim orders that progressively

expanded the substantive content of the right to food and directed the central and state governments to implement specific food security measures.

The Court's orders transformed what had been discretionary government programs, including the midday meal program for school children, the integrated child development services (ICDS) for young children and pregnant mothers, the Antyodaya Anna Yojana providing subsidized grain to the poorest households, and the public distribution system, into legally mandated entitlements. In doing so, the Court effectively accomplished through judicial order what Parliament had not achieved through legislation: the conversion of food security from a policy aspiration to a justiciable right.

The National Food Security Act of 2013, which was ultimately the legislative fruit of the PUCL case and the sustained advocacy of civil society organizations, was significant and important legislation. It provided statutory entitlements to subsidized food grain for approximately two-thirds of the Indian population, including priority households receiving five kilograms per person per month at one to three rupees per kilogram and Antyodaya households receiving 35 kilograms per household per month. The Act also provided for maternity benefits, take-home rations for young children, and nutritional support for certain categories of pregnant and lactating women.

But as the Global Jurist analysis published in 2024 documented, the judicialisation of the right to food in India has produced paradoxes that reflect the fundamental limitations of judicial enforcement of economic rights without corresponding political and administrative transformation. The Supreme Court's orders have been extensive and ambitious, but compliance has been chronically inconsistent. The midday meal program, while significantly expanded, continues to be characterized by quality problems, supply chain irregularities, and instances where children are receiving inadequate meals or no meals at all. The ICDS remains chronically underfunded and understaffed, particularly in the states with the highest rates of child malnutrition. The public distribution system, despite decades of court supervision, remains riddled with exclusion errors, bogus ration cards, and leakage to the commercial market.

The exclusion errors in the public distribution system are particularly significant from a rights perspective. The identification of beneficiaries under the National Food Security Act relies on data from the Socio-Economic and Caste Census (SECC) of 2011 and from state-level administrative processes. But the identification and exclusion of ineligible households from public benefit programs has been disproportionately borne by the most vulnerable: Dalit and Adivasi households with irregular documentation, migrant workers without local residence registration, Muslim families in areas with high political hostility toward the community, and disabled individuals without the documents required to establish identity. The Supreme Court's orders mandating inclusion of the most vulnerable have repeatedly been ignored at the implementation level.

The PM-POSHAN scheme (formerly the Midday Meal Scheme), the government's flagship child nutrition program, has in recent years been subject to political manipulation in ways that have compromised its effectiveness. Reports from multiple states documented that the scheme was being used for electoral purposes, with politicians taking credit for individual meal deliveries, while systematic quality monitoring was absent. In the pre-election period in several states in

2023 and 2024, there were documented instances of inadequate food being served under the scheme while state officials inflated reporting figures.

2.4 Aadhaar, Digital Exclusion, and the Right to Food

The introduction of the Aadhaar biometric identification system and its mandatory linkage to food entitlements represents one of the most significant and most dangerous experiments in the delivery of economic rights in contemporary India. The system was introduced as a mechanism for eliminating fraud and improving targeting in the public distribution system: by requiring biometric authentication at the point of distribution, the government argued, it would prevent duplicate and bogus rations from being drawn.

The consequences have been catastrophic for the most vulnerable. Multiple independent reports, including those by civil society organizations in Jharkhand, Rajasthan, and Uttar Pradesh, documented that mandatory Aadhaar linkage resulted in the denial of food rations to legitimate beneficiaries whose fingerprints could not be read by the biometric scanners (a common problem for elderly people, manual workers, and people with certain skin conditions), whose Aadhaar cards had been incorrectly linked to their ration cards, or who lacked mobile connectivity required to complete the authentication process. Starvation deaths linked to Aadhaar authentication failures were documented and reported by civil society organizations and journalists, most famously in the case of Santoshi Kumari, an eleven-year-old girl in Jharkhand who died of hunger-related causes in September 2017 after her family's ration card was delinked from their Aadhaar number.

The Supreme Court addressed the Aadhaar system in its landmark judgment in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), which established the right to privacy as a fundamental right, and in the main Aadhaar judgment of 2018, which upheld the constitutional validity of the Aadhaar system while striking down certain applications, including its mandatory use for private entities. But the Court did not adequately address the specific question of whether the mandatory Aadhaar requirement for food entitlements could be imposed in a way that denied food to legitimate beneficiaries. The result has been a continuation of exclusion errors, with the additional vulnerability of digital infrastructure failures.

The decision to make Aadhaar mandatory for food entitlements, against the explicit directions of the Supreme Court in the PUCL right to food case that no one should be denied food for lack of any document, illustrates the broader pattern of the Modi government's approach to economic rights: the deployment of sophisticated administrative technology in ways that appear modernizing and efficient but that systematically exclude the most marginalized while concentrating data power in the hands of the state. The biometric database Aadhaar, which now holds the iris scans and fingerprints of over 1.3 billion people, is simultaneously a mechanism for extending digital identity to the previously undocumented and a mechanism for the comprehensive surveillance of the population and the conditional grant of citizenship-like entitlements.

2.5 The Political Economy of Agricultural Policy and Farmer Distress

The agricultural crisis in India, manifested most dramatically in the epidemic of farmer suicides that has claimed over three hundred thousand lives since 1995 according to National Crime Records Bureau data, is one of the most severe economic rights failures in the world. The farmers who take their lives are overwhelmingly small and marginal farmers, often from Scheduled Caste and Scheduled Tribe communities, who are caught in a cycle of debt, declining agricultural incomes, and failed harvests made worse by climate change-driven weather volatility.

The agricultural policy framework that has produced this crisis is complex but its fundamental features are identifiable. The green revolution of the 1960s and 1970s transformed Indian agriculture toward high-input, high-yield production oriented toward the market rather than subsistence, creating a dependence on purchased seeds, fertilizers, and pesticides that made farmers vulnerable to price volatility and debt. The liberalization of the agricultural sector since the 1990s has reduced the government support for farmers while exposing them to global price competition without the equivalent support structures available to farmers in wealthy countries. The minimum support price system, which theoretically guarantees farmers a minimum price for their produce, has been chronically inadequate in coverage: the government procures only a small fraction of total agricultural production, leaving the majority of farmers to face market prices that frequently fall below production costs.

The three agricultural reform laws attempted by the Modi government in 2020, which were eventually repealed in December 2021 following the extraordinary year-long protest by farmers, primarily from Punjab and Haryana, at the borders of Delhi, illustrated the political dimensions of agricultural policy in a particularly vivid way. The laws would have abolished the minimum support price guarantee for many commodities, eliminated the regulated wholesale markets (mandis) through which the government procurement system operates, and introduced unrestricted corporate contract farming. The farmers who protested argued, with considerable economic justification, that the laws would expose them to the full force of corporate market power without any protective floor, destroying the livelihoods of hundreds of millions of small farmers.

The government's response to the farmer protests was revealing: it initially attempted to dismiss the protesters as misled by opposition parties and foreign interference, then subjected them to internet shutdowns, sedition cases, and UAPA charges against protest organizers. The treatment of peaceful agricultural protesters as potential security threats illustrates precisely the dynamic that Pogge's negative duty framework captures: the state was not merely failing to help farmers, it was actively using coercive mechanisms to prevent farmers from resisting the institutional arrangements that were exploiting them.

2.6 Child Malnutrition as Systematic Rights Violation: The POSHAN Framework and Its Gaps

The government's POSHAN Abhiyan (Prime Minister's Overarching Scheme for Holistic Nutrition), launched in 2018, was presented as a comprehensive and ambitious initiative to

address India's child malnutrition crisis. The scheme set targets to reduce stunting, underweight, wasting, and anaemia among children and women through integrated service delivery combining health, nutrition, water and sanitation, and social protection interventions.

Assessed against its own targets, POSHAN Abhiyan has fallen significantly short. The National Family Health Survey 5, conducted in 2019-2021, showed that while some indicators had improved marginally from NFHS 4 (2015-2016), India's child malnutrition rates remained extraordinarily high by any international comparison, and in some states had actually worsened. The anaemia rates among children and women, a particularly important indicator of nutritional status, increased in many states despite the scheme's emphasis on addressing micronutrient deficiency.

The gap between the scheme's ambitious targets and its actual outcomes reflects multiple structural problems. The primary delivery mechanism for nutrition services, the Anganwadi system operating through the ICDS, remains massively underfunded and understaffed. The Anganwadi workers who deliver nutrition services, health education, and early childhood development programs in communities across India are among the lowest-paid and least-supported workers in the public system, many classified as "honorary workers" rather than employees with full labour rights, despite working full-time hours and performing functions essential to the realization of children's rights to nutrition and development.

The CESCR's General Comment 12 on the right to adequate food is explicit that state obligations under the ICESCR include the obligation to ensure that food is "nutritionally adequate and safe" and that "vulnerable groups" receive specific attention. The CESCR's periodic review has consistently found India falling short of these obligations. The 2025 review of India's compliance noted the continuing gap between legislative commitments and ground-level delivery, the disproportionate impact of food insecurity on Scheduled Caste and Scheduled Tribe communities, and the failure to address the gendered dimensions of malnutrition, including the particular vulnerability of women and girls.

CHAPTER THREE: THE RIGHT TO HEALTH: CONSTITUTIONAL PROMISE AND SYSTEMIC COLLAPSE

3.1 India's Health Crisis: The Statistical Portrait

India's public health system is in a state of chronic crisis that constitutes one of the most severe and most systematically ignored human rights failures in the world. The statistics tell a story of extraordinary failure for a middle-income economy with a long history of public health policy ambition.

India's maternal mortality rate, while improved from historical levels, remains dramatically high by international comparison: approximately 97 per 100,000 live births in 2018-2020 according to official data, compared with single-digit rates in comparable middle-income countries. The under-five mortality rate, while significantly reduced from earlier decades, continues to reflect

the profound inequalities in access to health care: under-five mortality among Dalit and Adivasi children is significantly higher than the national average, and in states like Uttar Pradesh and Madhya Pradesh, which have the largest populations and the worst development outcomes, the rates approach those of much poorer countries.

India's public health expenditure stands at approximately 1.35 percent of GDP as of 2024-2025, dramatically below the government's own target of three percent established in the National Health Policy of 2017, and among the lowest in the world as a percentage of both GDP and total government expenditure. The consequence is a health system in which the vast majority of health care is delivered through a private sector that is largely unregulated, frequently exploitative, and entirely inaccessible without catastrophic out-of-pocket expenditure for the majority of the population. An estimated 55-65 percent of all health expenditure in India is out-of-pocket, making it one of the highest rates in the world and a primary driver of household impoverishment: millions of families are pushed below the poverty line each year by health care costs.

The COVID-19 pandemic exposed the structural inadequacy of India's public health system with devastating clarity. During the catastrophic second wave in April-May 2021, the health system collapsed: hospitals ran out of oxygen, ICU beds, and essential medicines. Bodies were cremated in parks and on roadsides because crematoriums were overwhelmed. The official death toll was severely undercounted: excess mortality analyses by demographers and epidemiologists estimated the actual death toll at several times the officially reported figure. The government's response to these analyses was not to improve mortality counting but to suppress the data and challenge the methodology of researchers who produced higher estimates. In April 2026, the Lancet published a retrospective analysis that documented the continuing gap between India's official COVID mortality data and the actual pandemic death toll, contributing to ongoing scholarly controversy about the scale of the mortality crisis.

3.2 The Right to Health in Constitutional Jurisprudence

The Supreme Court's expansion of Article 21 to encompass the right to health has been one of its most important jurisprudential contributions. In Consumer Education and Research Centre v. Union of India (1995), the Court held that the right to health is integral to the right to life and that the government has a constitutional obligation to provide health care to workers. In Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996), the Court held that the failure of a state hospital to provide emergency medical treatment to an injured worker violated his right to life. In State of Punjab v. Ram Lubhaya Bagga (1998), the Court further elaborated the right to health, holding that the state must provide reasonably good health services to all citizens.

The jurisprudential architecture of the right to health in India is thus substantial, creative, and in principle demanding. The problem, consistent with the pattern identified throughout this textbook, is the gap between the Court's doctrinal ambition and the reality of implementation. The Supreme Court has issued numerous directions in health-related public interest litigations, including directions on the quality of medical treatment in government hospitals, the availability of essential medicines, the standards for clinical establishments, and the prevention of medical negligence. Very few of these directions have been systematically implemented.

The specific challenge of legislating the right to health at the national level was examined in a 2024 article in the journal "The Theory and Practice of Legislation," which analyzed India's failure to enact a national Right to Health law despite repeated legislative attempts. The article, titled "Legislating on Economic-Social Rights Amidst De-Democratisation: Lessons from a Lapsed Indian Bill on the Right to Health," documented how the progressive de-democratization of the Indian political system under the Modi government had systematically undermined the prospects for rights-based health legislation. The bill proposed by civil society organizations and championed by some opposition parliamentarians, which would have established a justiciable right to health with specific standards for health care quality and accessibility, was never brought before Parliament. The article noted that the political conditions created by authoritarian consolidation, where scrutiny of government policy is suppressed and civil society advocacy is criminalized, are fundamentally incompatible with the political processes through which economic rights legislation is normally developed.

3.3 The Ayushman Bharat Program: Inclusion or Exclusion?

The Pradhan Mantri Jan Arogya Yojana (PMJAY), launched in 2018 under the Ayushman Bharat program, represents the Modi government's flagship health policy initiative. PMJAY provides health insurance coverage of up to five lakh rupees per family per year for secondary and tertiary hospitalisation through empaneled public and private hospitals. The scheme was presented as "the world's largest health protection scheme," covering approximately fifty crore (500 million) people.

The political optics of Ayushman Bharat have been impressive and the government has invested heavily in communicating its scale and ambition. But the substantive assessment of its impact on health outcomes and on the right to health is considerably more complex and considerably less positive.

The scheme's design reveals its fundamental limitations. By focusing exclusively on hospitalisation coverage, PMJAY addresses only the most expensive and dramatic episodes of health care need while leaving entirely unaddressed the preventive and primary care needs that determine the majority of health outcomes. A person covered by PMJAY who cannot access a quality hospital without travelling hundreds of kilometres, who cannot afford the informal payments demanded by hospital staff in empaneled facilities, who cannot take time off work for hospitalization, and who never receives the primary care that would prevent the condition requiring hospitalization in the first place, is not meaningfully protected by the scheme.

The exclusion of the truly poorest from effective benefit is a documented feature of the scheme's implementation. Studies in multiple states found that while official enrollment figures were high, actual utilization of benefits was concentrated among households with greater literacy, awareness, and social connections needed to navigate the complex processes of hospital empanelment and insurance claim processing. The Dalit agricultural laborer in rural Uttar Pradesh, the Adivasi family in the forest regions of Chhattisgarh, and the migrant worker in an urban slum are precisely the people who are most likely to have formal enrollment under PMJAY and least likely to successfully access its benefits when needed.

The emphasis on private sector service delivery through the insurance mechanism is also deeply problematic from a rights perspective. The empanelment of private hospitals under PMJAY has created a financial incentive for unnecessary procedures, fraudulent claims, and the concentration of benefit delivery in urban private hospitals rather than in the public primary health care infrastructure where the rural poor would actually be served. Multiple independent analyses have found evidence of supplier-induced demand, overtreatment, and insurance fraud in the PMJAY system, consistent with the well-documented dynamics of health insurance markets globally.

The contrast between the resources invested in the Ayushman Bharat publicity campaign and the resources invested in strengthening the primary health care system is stark and revealing. The government's public expenditure on health as a percentage of GDP has not meaningfully increased since the launch of Ayushman Bharat, suggesting that the scheme represents a reallocation of existing inadequate resources toward a politically visible insurance program rather than an expansion of the public health system's capacity to deliver health as a right.

3.4 Mental Health Rights: The Invisible Crisis

India's mental health system represents one of the most severe and least addressed economic rights failures in the country. India has an estimated treatment gap for mental disorders of approximately 80 to 90 percent: the proportion of people with mental health conditions who receive any form of treatment. There are approximately 0.3 psychiatrists per 100,000 population in India, compared with 10 or more in high-income countries and the WHO's recommended minimum of three per 100,000. There are approximately 0.07 psychiatric beds per 10,000 population, compared with the WHO recommendation of more than ten.

The legal framework for mental health in India was significantly reformed by the Mental Healthcare Act of 2017, which replaced the Mental Health Act of 1987 and introduced a rights-based framework for mental health care. The 2017 Act established the right of persons with mental illness to access mental health care and treatment from mental health services run or funded by the government, the right to community living, the right to equality in treatment, protection from cruel, inhuman and degrading treatment, and the right to make advance directives about one's own mental health care.

The implementation of the 2017 Act has been deeply inadequate. The Act required the establishment of Mental Health Review Boards in every state and union territory: these have been established in some jurisdictions and not in others. The Act required the government to integrate mental health services into the general health system and to expand community-based care: neither has occurred at meaningful scale. The Act required state governments to ensure adequate funding for mental health services: the states that have the greatest mental health needs, which are typically the poorest and most under-resourced, have the least capacity to fund services.

The mental health consequences of India's broader human rights failures compound the specific failures of the mental health system. The chronic stress of economic insecurity, caste-based humiliation, communal violence, displacement, and the lived experience of structural

discrimination produce elevated rates of depression, anxiety, trauma, and other mental health conditions in the most marginalized communities. The farmer suicide crisis, which claims hundreds of lives each month, is a mental health crisis produced by economic exploitation. The trauma experienced by Kashmiri civilians living under indefinite military rule is a mental health crisis produced by political repression. The psychological consequences of custodial torture, mob violence against minorities, and forced displacement are mental health crises produced by state and non-state violence.

None of these dimensions is adequately addressed by the government's mental health policy framework, which is focused primarily on expanding access to psychiatric medication rather than on addressing the social determinants of mental ill-health or on providing the community-based psychosocial support that genuine mental health recovery requires.

CHAPTER FOUR: THE RIGHT TO WORK: LABOUR RIGHTS, INFORMALISATION, AND THE NEW DISPENSATION

4.1 India's Labour Market: Structure and Crisis

The structural character of India's labour market is the foundation on which the economic rights failure of hundreds of millions of workers is built. Approximately 90 to 93 percent of India's workforce, according to various estimates, is employed in the informal sector: agriculture, construction, domestic work, street vending, home-based piece-work manufacturing, and a vast range of other activities that are characterized by the absence of formal employment contracts, social security coverage, and the application of labour protective legislation.

The informal workforce includes some of the most exploited workers in the world: bonded labourers who work in conditions of debt bondage that violate the constitutional prohibition of forced labour under Article 23; child labourers who are working rather than attending school in violation of both the Constitution and the Right to Education Act; domestic workers who are entirely outside the coverage of most labour legislation and who face sexual exploitation, wage theft, and abuse with virtually no recourse; construction workers who face severe occupational safety hazards and who have been systematically excluded from the safety protocols that apply to formal sector workers; and agricultural laborers who remain economically dependent on and socially subordinate to landlords despite decades of land reform legislation.

The ICESCR's Article 7 requires state parties to recognize the right of everyone to the enjoyment of just and favourable conditions of work, including fair wages, safe working conditions, equal opportunity for advancement, and rest and leisure. India has ratified the ICESCR and has not entered any reservations to Article 7. But the legal architecture of labour protection in India, while extensive on paper, applies effectively only to the formal sector, which employs less than 10 percent of the workforce. For the 90 percent in the informal economy, the right to just and favourable conditions of work under international law is a completely empty promise.

4.2 The Four Labour Codes: Consolidation or Regression?

The Modi government's codification of India's labour law into four major codes, the Wages Code (2019), the Industrial Relations Code (2020), the Social Security Code (2020), and the Occupational Safety, Health and Working Conditions Code (2020), was presented as a modernizing reform that would simplify a complex and overlapping legal framework while extending protections to informal workers. The reality, as assessed by labour rights scholars, trade unions, and the international labour community, is more complex and in significant respects constitutes a regression from existing worker protections.

The four codes consolidate approximately 44 pre-existing central labour laws. The consolidation has several features that weaken worker protections. The Industrial Relations Code raises the threshold for requiring government approval before layoffs and closures from 100 workers to 300 workers, enabling employers to dismiss workers more freely in a larger category of establishments. It also restricts the conditions under which workers can legally strike, requiring a notice period of 60 days before any strike and prohibiting strikes during conciliation proceedings, effectively creating conditions that make legal strikes almost impossible in many practical situations.

The Occupational Safety, Health and Working Conditions Code, which should be the primary mechanism for protecting workers from workplace hazards, has been criticized by occupational health specialists for weakening protections relative to the laws it replaces and for failing to adequately address the specific hazards faced by informal workers in sectors including construction, agriculture, and home-based manufacturing.

The Social Security Code extends the formal coverage of provident fund and other social security schemes to informal workers, which is in principle a progressive development. But the extension of coverage is effectively contingent on the engagement of employers in the registration and contribution process, which in the informal sector is largely illusory: the worker who has no formal employment contract, no identifiable employer, and no regular income documentation cannot practically access the social security entitlements that the Code nominally provides.

The failure to enact the four codes effectively at the state level, which is where most labour law enforcement actually occurs in India's federal system, compounds the central government's legislative framework. Many states have used the codification process as an opportunity to further weaken worker protections, exempt additional categories of workers and establishments from coverage, and reduce enforcement resources.

4.3 Platform Work, Gig Economy, and the New Frontier of Labour Exploitation

The rapid growth of platform-based work in India, the delivery workers, ride-hailing drivers, and domestic service workers organized through digital platforms including Zomato, Swiggy, Ola, Uber, Urban Company, and dozens of others, has created a new frontier of labour rights violation that India's legal and regulatory framework is largely unprepared to address.

Platform workers are classified by the companies as "independent contractors" or "partners" rather than employees, allowing the companies to avoid the responsibilities of employment including minimum wage guarantees, social security contributions, occupational safety obligations, and the right to collective bargaining. The legal fiction of independent contractor status is maintained through algorithmic management systems that are actually more controlling than traditional employment relationships: the driver or delivery worker has no meaningful autonomy over their working hours, routes, pricing, or working conditions, but is denied the protections of employment law through the formal legal designation of independence.

The Social Security Code of 2020 created a new category of "gig workers" and "platform workers" and directed the central government to formulate schemes for their social security. But the implementation of these provisions has been minimal: as of 2025, no comprehensive national scheme for platform worker social security had been implemented, and the states that have attempted to regulate platform work, including Rajasthan, which enacted the Rajasthan Platform Based Gig Workers Act in 2023, face industry resistance and legal challenges.

The gig economy workforce in India, estimated at over 15 million workers and growing rapidly, represents a population exposed to precarious work, unpredictable income, absence of social protection, and algorithmic disciplinary power without effective legal recourse. The COVID-19 pandemic revealed with particular clarity the vulnerability of gig workers: delivery platform workers, classified as non-employees without employment rights, were unable to claim sickness benefits, emergency compensation, or protection from dismissal when they fell ill or could not work due to the pandemic.

4.4 Bonded Labour and Modern Slavery

The bonded labour system, in which workers are bound to labour for a creditor until a debt is repaid, was constitutionally prohibited by Article 23 and legally abolished by the Bonded Labour System (Abolition) Act of 1976. Nearly half a century after that abolition, bonded labour remains extensively documented in multiple sectors of the Indian economy.

The International Labour Organisation's 2021 estimates suggested that India may have the largest number of people in forced labour of any country in the world, with estimates ranging from several million to tens of millions depending on the definition and methodology used. The industries most commonly associated with bonded labour in India include brick kilns, stone quarries, agricultural estates, domestic work, construction, and certain segments of the textile and garment industry.

The persistence of bonded labour almost fifty years after its formal legal abolition is itself a significant fact requiring explanation. The legal prohibition exists. The constitutional guarantee exists. The judicial condemnation of bonded labour is extensive and unambiguous: in People's Union for Democratic Rights v. Union of India (1982) and Bandhua Mukti Morcha v. Union of India (1984), the Supreme Court established the constitutional obligation to identify and release bonded labourers and to rehabilitate them. But enforcement has been chronically inadequate.

The reasons for non-enforcement are structural. The bonded labour system is embedded in the caste system: the vast majority of bonded labourers are Dalits, and the majority of those who hold them in bondage are upper-caste landlords and employers. The police, the district administration, and the labour enforcement machinery operate in social contexts in which caste solidarity protects perpetrators. The labour inspectorate is chronically understaffed and under-resourced. Victims fear retaliation and have no practical alternative to the debt bondage relationship because they have no other economic options and no access to credit through formal channels. And the political economy of the industries that use bonded labour, including the brick kiln and quarrying industries that supply essential inputs to the construction sector, creates powerful incentives for those with political influence to resist enforcement.

The CESCR General Comment 18 on the right to work is explicit that bonded labour constitutes a violation of the right to work and requires immediate state action for identification, release, and rehabilitation. The ILO Forced Labour Convention (No. 29) and the Protocol of 2014 to the Forced Labour Convention, both of which India has ratified, require the adoption of effective measures to combat forced labour including through criminal prosecution of perpetrators and the provision of protection and remedies to victims. India's compliance with these obligations is deeply inadequate.

4.5 Migrant Workers: The Invisible Workforce

The magnitude of India's internal labour migration is extraordinary: estimates of the migrant labour force range from 100 million to 450 million depending on the definition of migration and the methodology of estimation. These workers move from poorer states, primarily Bihar, Uttar Pradesh, Rajasthan, Odisha, and the northeastern states, to more economically developed states, primarily Maharashtra, Gujarat, Karnataka, Delhi, and Haryana, to work in construction, manufacturing, agriculture, domestic service, and urban informal services.

The COVID-19 pandemic revealed the conditions of migrant workers with brutal clarity. When the government announced a nationwide lockdown on 24 hours' notice in March 2020, millions of migrant workers who had no work, no income, no savings, and no social security in the cities where they worked were left with no option but to walk hundreds of kilometres to their home states. The images of migrant workers walking on highways, being hit by trucks, dying of exhaustion, losing infants, and being subjected to humiliating "sanitation" procedures by state authorities, were among the most damning visual documentations of India's governance failure in its history.

The migrant workers' crisis during COVID was not the product of the pandemic alone: it was the product of the structural conditions of migration that left workers without any legal protection, any social support, or any formal recognition as rights-bearing persons in the states where they worked. The Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979 provided a formal framework for the protection of interstate migrant workers, but it was almost entirely unenforced, and most migrant workers had no idea that it existed or that they had any rights under it.

The government's response to the COVID migrant crisis was initially characterized by denial and then by the provision of some emergency relief that was widely assessed as inadequate. The Shramik Special trains provided to transport migrant workers home were appreciated but insufficient, and the period of the lockdown demonstrated with particular clarity the government's prioritization of formal economic considerations over the welfare of the informal workforce that sustains the formal economy.

CHAPTER FIVE: THE RIGHT TO HOUSING: LANDLESSNESS, DISPLACEMENT, AND URBAN VIOLENCE

5.1 Housing as a Human Right: The Framework

The right to adequate housing is established by Article 11(1) of the ICESCR, which recognizes the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing, and housing. The CESCR's General Comment 4 (1991) provides a comprehensive framework for the content of the right to adequate housing, identifying seven components: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.

The right to adequate housing has been incorporated into Indian constitutional jurisprudence through the Supreme Court's expansive interpretation of Article 21. In Olga Tellis v. Bombay Municipal Corporation (1985), the Court held that the right to life includes the right to livelihood and that eviction from housing without providing alternative accommodation could implicate the right to life. In Chameli Singh v. State of UP (1996), the Court described shelter as a fundamental right flowing from the right to life. The Sudama Singh v. Government of Delhi (2010) case, which addressed the relocation rights of slum dwellers, represented one of the Court's most explicit recognitions of housing rights for the urban poor.

5.2 The Scale of Housing Deprivation

India's housing crisis is one of the most severe in the world by absolute numbers, though not necessarily by proportional standards in relation to the country's level of development. According to the 2011 Census, over 65 million people, approximately 5 percent of the population, lived in urban slums, a figure that multiple analysts regard as a significant undercount. The rural housing deficit, including households living in inadequate, non-pucca (non-permanent material) structures without access to basic sanitation, water, or electricity, affects hundreds of millions of people.

The urban homeless population, who have no housing at all and live on streets, under bridges, in public spaces, and in temporary shelters, is estimated at several million nationally. The condition of the urban homeless represents the most extreme form of housing deprivation: exposure to weather, violence, disease, and the complete absence of private space and dignity. The Supreme Court in Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan (1997) held that

municipal bodies have a constitutional obligation to provide shelter to the homeless, but implementation of this direction has been minimal across most Indian cities.

The Pradhan Mantri Awas Yojana (PMAY), the government's flagship housing scheme, was launched in 2015 with the target of providing housing for all by 2022. The scheme envisioned both an urban component (PMAY-U) and a rural component (PMAY-G). The 2022 deadline came and went without achievement of the housing for all target, and the government revised the deadline. The scheme has constructed a significant number of houses but has been criticized for: the inadequate size of units; the failure to provide accompanying services including water, sanitation, and electricity that make a house livable; the location of units in poorly serviced areas far from livelihoods; the exclusion of the most marginalized households due to documentation requirements; and the corruption and contractor-driven quality problems that have produced structurally inadequate dwellings that deteriorate rapidly.

The specific housing situation of Dalits is shaped not merely by economic poverty but by the persistence of caste-based residential segregation. Dalit settlements, known variously as "Dalit bastis" or "SC colonies," are typically located at the periphery of villages and towns, separated from upper-caste habitations by physical distance, social convention, and sometimes by formal zoning arrangements that have historical roots in the segregationist practices of the pre-independence era. The land on which Dalit settlements stand is often insecure in legal terms: many families lack formal title to the land they have occupied for generations, making them vulnerable to eviction by upper-caste landlords or by government authorities conducting "development" projects.

5.3 Forced Evictions and the Weaponization of Urban Governance

Forced evictions of urban slum communities represent one of the most direct and devastating forms of housing rights violation in India. These evictions are conducted under multiple legal authorities including the statutory provisions for slum clearance, the exercise of eminent domain for "public purposes" including infrastructure projects, and the increasingly weaponized exercise of municipal building regulation enforcement, the "bulldozer justice" documented in earlier parts of this textbook.

The scale of forced evictions is documented by civil society organizations including the Housing and Land Rights Network (HLRN), which publishes periodic assessments of evictions in India. HLRN's report "Forced Evictions in India" documented thousands of eviction incidents annually, affecting millions of people, many of whom receive little or no notice, no meaningful alternative accommodation, and no legal representation or compensation. The evictions disproportionately affect the poorest urban residents: the informal settlements that are the target of evictions are typically the only affordable housing option for low-income migrants, Dalit families, and other marginalized communities who cannot access the formal housing market.

The pattern of evictions in the context of large infrastructure and event projects is particularly concerning. The preparation for major sporting events, the Commonwealth Games in Delhi in 2010 and the preparations for the 2030 Commonwealth Games recently awarded to India, has been associated with large-scale evictions of slum dwellers near sporting venues and in urban

beautification zones, without adequate notice, compensation, or alternative accommodation. The Human Rights Watch dispatches on the 2030 Commonwealth Games preparations, published in November 2025, noted that India's selection as host raised concerns about forced evictions, labour rights in construction, and the suppression of protest by displaced communities, drawing on the experience of past games-related evictions.

The legal framework for challenging evictions is theoretically available but practically inaccessible. The Supreme Court has established principles requiring notice, opportunity to be heard, consideration of alternative accommodation, and compensation in cases of forced eviction implicating the right to life. But these principles are not applied at the operational level of municipal governance: evictions happen in the early morning hours with police enforcement before affected families can access legal assistance, the timelines for challenging evictions are impossibly short relative to the time required to obtain legal representation and file petitions, and the persons most affected are the least equipped to navigate the legal system.

The Adivasi land rights situation in rural India represents a specific dimension of housing rights violations that has been addressed in previous parts of this textbook in the context of forest rights. The Forest Rights Act of 2006 was specifically intended to address the housing and livelihood insecurity of forest-dwelling Scheduled Tribe communities by recognizing their rights to land and forest resources. The failure of implementation, the rejection of millions of valid claims, the government's continued facilitation of corporate land acquisition in Adivasi areas, and the use of wildlife conservation as a pretext for eviction from protected areas are documented, systematic, and continuing violations of the housing rights of the most geographically isolated and politically voiceless population.

CHAPTER SIX: THE DIRECTIVE PRINCIPLES OF STATE POLICY: THE CONSTITUTIONAL ARCHITECTURE OF NON-ACCOUNTABILITY

6.1 The Ambedkarian Contradiction

The non-justiciability of the Directive Principles represents one of the most significant constitutional design choices in the history of Indian governance, and one whose consequences have been systematically underanalyzed even by scholars who are attentive to the gap between constitutional promise and social reality. Understanding this choice requires returning to Ambedkar, who was simultaneously the most important advocate for the inclusion of strong social and economic rights in the Constitution and the person who accepted, within the constraints of the Constituent Assembly, the compromise that made those rights non-enforceable.

Ambedkar's speeches in the Constituent Assembly about the Directive Principles reveal the depth of his understanding of the tension embedded in this compromise. He knew that the social and economic transformation demanded by the Directive Principles, the abolition of landed privilege, the guarantee of a living wage, the provision of health care and education, the redistribution of concentrated wealth, required a state commitment that could not be guaranteed by constitutional fiat alone. He also knew that the courts, dominated as they were by upper-caste

lawyers and judges with strong ideological commitments to property rights, were likely to resist the redistributive implications of strong economic rights guarantees if those guarantees were made judicially enforceable.

The compromise, which was to include the Directive Principles as non-enforceable guidelines, was pragmatic in the political sense but deeply problematic in the rights sense. It created a constitutional system that formally acknowledged the social and economic obligations of the state while insulating those obligations from the primary mechanism of rights enforcement. The result was predictable: successive governments have consistently acknowledged the aspirational character of the Directive Principles while failing to implement them, knowing that non-implementation carries no legal consequences.

The Supreme Court's attempts to bridge the gap through the reading of Directive Principles into Fundamental Rights, most systematically in the Minerva Mills case (1980) and in the development of the right to life jurisprudence, have been creative and important but constitutionally awkward. The Court has essentially been constructing a shadow constitutional order in which non-justiciable principles are given justiciable content through the mediation of Article 21, a process that depends on the continued willingness of the Court to engage in this kind of creative construction and that can be reversed or narrowed by future constitutional amendments or judicial reinterpretation.

6.2 Jurisprudential Theory: Non-Justiciability and Democratic Legitimacy

The debate about the justiciability of socioeconomic rights is one of the most contested in constitutional theory, and it has been conducted with particular sophistication in India precisely because the Indian Constitution explicitly addresses the question. The arguments against justiciability deserve serious engagement before being assessed against the Indian experience.

The primary argument against judicial enforcement of socioeconomic rights is the "institutional competence" or "polycentricity" argument, associated with Lon Fuller's analysis of adjudication and subsequently developed by scholars including Mark Tushnet and Ran Hirschl. The argument holds that socioeconomic rights claims require courts to make complex redistributive decisions that involve tradeoffs between different social goods, the allocation of limited government resources among competing needs, and the evaluation of technical policy judgments that courts are institutionally unequipped to make. The right to food, the argument goes, cannot be adjudicated in the same way as the right not to be tortured, because the torturer can simply stop torturing whereas the government cannot simply produce food for all hungry people by judicial fiat.

This argument has some genuine force but its application to the Indian context is complicated by two features of Indian jurisprudential practice. First, the Supreme Court in public interest litigation has developed procedural mechanisms, including the appointment of commissioners, the use of expert committees, and the monitoring of compliance, that significantly expand its institutional capacity to engage with complex polycentric issues. The PUCL right to food case demonstrated that the Court can, through sustained engagement over many years, significantly improve the content and delivery of food security programs even without a formal justiciable

right to food. Second, the argument from institutional incompetence has been selectively deployed: courts in India have not hesitated to make complex infrastructure, environmental, and developmental decisions in public interest litigation, decisions that are at least as polycentric as socioeconomic rights adjudication, when the political constituencies supporting those decisions are powerful enough.

The strongest argument for justiciability of socioeconomic rights in the Indian context is not that courts will always make better socioeconomic policy decisions than legislatures and executives, but that the systematic non-justiciability of rights that matter most to the poorest creates a constitutional system that is structurally biased against the poor. When the rights of the wealthy are violated, they can access courts. When the rights of the poor are violated, if those rights are classified as non-justiciable, they have no legal recourse. The non-justiciability of Directive Principles is, from this perspective, not merely a technical constitutional design choice: it is a form of constitutional discrimination against the most marginalized.

6.3 International Comparison: South Africa's Constitutional Model

The most directly relevant international comparison for the question of constitutional socioeconomic rights is South Africa, which adopted a comprehensive set of justiciable socioeconomic rights in its 1996 Constitution and whose Constitutional Court has developed an extensive jurisprudence in interpreting and enforcing them. The comparison is not merely analytical: India and South Africa share a history of colonial legal systems and the challenge of building rights-respecting constitutional orders in societies marked by extreme inequality, racial and caste-based discrimination, and concentrated economic power.

The South African Constitutional Court's approach to socioeconomic rights, developed in landmark cases including Government of the Republic of South Africa v. Grootboom (2000) on the right to housing, Minister of Health v. Treatment Action Campaign (2002) on the right to health care, and Khosa v. Minister of Social Development (2004) on social security, has been characterized by three features that distinguish it from both the non-justiciable aspiration model and the full judicial welfare state model.

First, the Court has adopted a "reasonableness" standard: the state's compliance with socioeconomic rights obligations is assessed by asking whether the measures taken are reasonable, in the sense of being responsive to the needs of those most in need, achieving a minimum core of protection for the most vulnerable, being implemented progressively within available resources, and avoiding deliberate retrogression.

Second, the Court has been willing to issue structural interdicts, orders that retain jurisdiction over compliance and require the state to report back on implementation, creating a form of ongoing judicial supervision of socioeconomic rights implementation.

Third, the Court has engaged seriously with the structural determinants of socioeconomic deprivation, recognizing that housing, health, and food security rights cannot be addressed in isolation from the land tenure, labour market, and social insurance systems that determine who has access to resources.

The South African model has significant limitations and has not produced the comprehensive socioeconomic transformation that its architects hoped for. But it has produced specific, measurable improvements in housing, health care access, and social security that would not have occurred without judicial supervision. The Indian model, with its non-justiciable Directive Principles and its reliance on the creative expansion of Article 21, has produced much more uneven and more easily reversible results.

CHAPTER SEVEN: THE POLITICAL ECONOMY OF HINDU NATIONALISM AND ECONOMIC RIGHTS

7.1 Crony Capitalism and the Economics of Exclusion

The relationship between the BJP's Hindu nationalist project and India's economic rights failures is not incidental: it is structural. Understanding this relationship requires moving beyond the common analytical separation between the "identity politics" of Hindu nationalism and the "economic policy" of the Modi government, and recognizing them as two dimensions of a single political project.

The Modi government's economic model is characterized by a combination that might initially seem contradictory: simultaneous market liberalization (reducing regulatory constraints on business, reducing labour protections, facilitating corporate land acquisition, reducing public sector employment) and targeted welfare distribution (direct benefit transfer programs, housing schemes, cooking gas subsidies). But the apparent contradiction dissolves when the two elements are understood as serving a single political purpose: the concentration of economic resources in the hands of a small group of corporate entities with close ties to the ruling party, combined with the mobilization of the poor through targeted welfare transfers that create personalized relationships of political gratitude without addressing the structural conditions of poverty.

The Oxfam India inequality data is extraordinarily striking. According to the Oxfam India report published in 2024, India's top one percent of the population holds over 40 percent of the country's total wealth, while the bottom 50 percent holds less than three percent. The concentration of wealth at the top has accelerated significantly during the Modi years: the number of Indian billionaires has grown dramatically since 2014, while real wages for informal workers have stagnated or declined in real terms.

The concentration of economic power is not independent of the political structure. The relationship between the Modi government and specific corporate entities, most prominently the Adani Group, has been the subject of investigation by the opposition, by international investors, by the short-seller research firm Hindenburg Research (whose January 2023 report on the Adani Group alleged massive fraud and stock manipulation), and by the Supreme Court. The Supreme Court's handling of the petition challenging the Adani Group's alleged market manipulation has been characterized by critics as excessively deferential to the government's position, with the Court ultimately declining to order a serious independent investigation into the allegations.

The concentration of media ownership among corporate entities with close ties to the ruling party is itself a dimension of the political economy that directly affects economic rights: the media's failure to seriously investigate corporate corruption, to document the impact of economic policy on the poor, and to hold the government accountable for welfare delivery failures is in part a product of the ownership structure of media conglomerates whose business interests depend on maintaining favorable relations with the government.

7.2 Labour Law Reforms as Class Warfare

The labour law reforms implemented by the Modi government between 2019 and 2021, discussed in the previous chapter in terms of their specific content, also need to be understood as expressions of the government's structural orientation toward capital rather than labour. The consolidation of labour laws into four codes was accompanied by a systematic weakening of worker protections that benefited corporate employers while leaving workers more exposed to exploitation.

The political economy of these reforms is transparent when the lobbying records and the public statements of industry associations are examined. The Confederation of Indian Industry (CII) and the Federation of Indian Chambers of Commerce and Industry (FICCI) had been demanding reforms to India's "rigid" labour laws for decades, arguing that the protections against dismissal and the mandatory benefit requirements made it difficult for Indian companies to compete with Chinese manufacturers and to attract foreign investment. The four labour codes reflect the adoption of this industry perspective almost entirely, with the token gestures toward extending social security coverage to informal workers providing the fig leaf of worker concern.

The contrast between the government's treatment of organized corporate interests and its treatment of organized labour is stark. The farmer protests of 2020-2021, which involved some of the largest sustained popular protests in Indian history, were eventually successful in forcing the repeal of the farm reform laws. But the labour code reforms, which affect a far larger proportion of the workforce, proceeded without equivalent resistance because the informal workforce that would be most affected is least organized politically. The lesson the government drew from the farmer protest experience appears to have been not that popular protest is a legitimate mechanism for democratic accountability but that it must be prevented from reaching the scale at which it becomes irresistible.

7.3 Anti-Muslim Economic Discrimination and the Right to Livelihood

The economic dimensions of the BJP's anti-Muslim politics have received less analytical attention than the more dramatic expressions of Hindu nationalist violence but they are pervasive and systematically documented. The economic marginalization of India's Muslim population is a function both of historical disadvantage, discussed in Part Six of this textbook, and of specific contemporary policies and practices that discriminate against Muslims in access to livelihoods.

The campaigns for the social boycott of Muslim traders, encouraged by Hindu nationalist organizations and in some cases endorsed by elected BJP officials, have directly affected Muslim businesses in multiple states. The calls to refuse to buy from Muslim butchers, to refuse to

patronize Muslim-owned shops, and to ban Muslim traders from fairs and markets have been made explicitly as religiously motivated economic campaigns. The Uttar Pradesh administration's actions preventing Muslim traders from setting up stalls at religious fairs, on the purported grounds of preventing "communal tension," effectively enforced religiously discriminatory exclusions from economic activity through the machinery of the state.

The demolition campaigns that have been extensively documented in earlier parts of this textbook have a specific economic dimension: the demolition of Muslim-owned commercial properties, shops, and factories without legal process or compensation destroys the economic assets and livelihoods of Muslim families and communities. The Supreme Court's October 2024 judgment condemning bulldozer demolitions as extrajudicial punishment was specifically relevant here: the demolition of a person's commercial property because they have been accused of a crime, or because they belong to a community that is associated with a crime in the government's political narrative, violates the right to property guaranteed by Article 300A and the right to livelihood implicitly protected by Article 21.

The government's use of the Enforcement Directorate (ED) and the Income Tax Department against Muslim organizations, Muslim politicians, and Muslim business figures reflects the weaponization of financial regulation against a specific community. While individual cases may have legitimate bases in investigation of actual financial crime, the pattern of ED and IT action disproportionately targeting Muslim community figures and organizations, while leaving comparable Hindu nationalist organizations uninvestigated, constitutes systemic discrimination in the enforcement of economic regulation.

CHAPTER EIGHT: CLIMATE CHANGE, ENVIRONMENTAL RIGHTS, AND THE ADIVASI QUESTION

8.1 Environmental Rights as Human Rights

The recognition of environmental rights as human rights has been one of the most significant developments in international human rights law over the past three decades. In July 2022, the UN General Assembly adopted a resolution declaring the right to a clean, healthy, and sustainable environment as a universal human right, building on decades of treaty development, domestic constitutional recognition, and the jurisprudence of international and regional human rights courts.

India's Supreme Court has been among the most proactive judicial bodies in the world in developing environmental rights jurisprudence. Beginning with the Rural Litigation and Entitlement Kendra v. State of UP (1985) limestone quarrying case, through the extensive M.C. Mehta litigation on industrial pollution, the Vellore Citizens Welfare Forum case on the right to a pollution-free environment (1996), and the Subhash Kumar v. State of Bihar case (1991) which recognized the right to a healthy environment as part of the right to life, the Supreme Court has built a comprehensive doctrinal framework recognizing environmental protection as a constitutional obligation.

The Precautionary Principle, the Polluter Pays Principle, and the Principle of Sustainable Development have been recognized as part of Indian environmental law through judicial incorporation of international environmental principles. These principles impose substantive obligations on the state to prevent environmental harm before it occurs, to require polluters to bear the costs of the pollution they create, and to pursue development pathways that do not compromise the environmental resource base required by future generations.

8.2 Climate Vulnerability and Differentiated Impact

India is one of the countries most severely affected by climate change, and the impacts of climate change fall most heavily on the communities that have contributed least to the emissions that cause it. Dalit and Adivasi communities, rural agricultural workers, small and marginal farmers, and coastal fishing communities are the populations most exposed to the climate hazards, including extreme heat, irregular monsoons, flooding, cyclones, sea level rise, and agricultural disruption, that are becoming more frequent and more severe with each passing year.

The April 2025 heat wave that affected large parts of northern and western India reached temperatures exceeding 50 degrees Celsius in some areas, making outdoor labour physically impossible and deadly for vulnerable populations including outdoor workers, the elderly, and the homeless. India's heat action plans, which exist in some states, have been assessed as inadequate in coverage, underfunded in implementation, and insufficiently targeted toward the most vulnerable populations. The deaths that occur during extreme heat events are systematically underrecorded: heat-related mortality is not a separately tracked category in India's official cause-of-death statistics, making the true toll of heat mortality invisible in the official record.

The climate vulnerability of coastal communities is illustrated by the situation of the fishing communities of coastal Odisha, Andhra Pradesh, Tamil Nadu, and Kerala, who face existential threats from rising sea levels, increased cyclone intensity, and changing fish stock distribution. The constitutional framework for protecting the rights of these communities, including their rights to continued livelihood and to the coastal lands and fisheries on which those livelihoods depend, is provided by the Coastal Regulation Zone notification and its subsequent revisions. But the CRZ has been repeatedly amended in ways that progressively allow commercial development in coastal zones at the expense of traditional fishing communities, a pattern that constitutes a form of regulatory capture by tourism and real estate interests at the expense of the most economically vulnerable coastal populations.

8.3 Forest Rights, Conservation Displacement, and the Wildlife Protection Act

The tension between wildlife conservation and the rights of Adivasi communities is one of the most difficult and most politically charged issues in India's environmental rights landscape. The Wildlife Protection Act of 1972, the Forest Conservation Act of 1980, and the subsequent development of the national park and tiger reserve system have created a framework for wildlife conservation that has, in multiple documented instances, been used to evict Adivasi communities from lands they have inhabited for generations.

The conservation model embedded in India's wildlife laws is based on the assumption that effective wildlife protection requires the removal of human populations from protected areas, a model that conservation scientists, indigenous rights scholars, and the communities affected have consistently challenged as both ethically wrong and practically counterproductive. The empirical evidence suggests that community-based conservation, in which indigenous and local communities are recognized as stewards of the ecosystems they inhabit, produces better biodiversity outcomes than fortress conservation models that exclude local communities.

The Supreme Court's 2019 order in the Wildlife First case, which could have resulted in the eviction of over a million Adivasi families from protected forests whose claims had been rejected under the Forest Rights Act, represented the most dramatic confrontation between wildlife conservation law and Adivasi housing and livelihood rights. The Court's subsequent stay of the eviction order, following widespread protest and government intervention, prevented the immediate catastrophe but did not resolve the underlying tension.

The UN Special Rapporteur on the Rights of Indigenous Peoples has specifically documented India's failure to adequately recognize and protect Adivasi rights to land, territory, and resources, including in the context of conservation displacement. India has not endorsed the UN Declaration on the Rights of Indigenous Peoples, though it voted in favour of its adoption in 2007 and has subsequently participated in forums addressing indigenous rights. The failure to formally recognize India's Adivasi communities as "indigenous peoples" in the international legal sense, preferring the constitutional designation of "Scheduled Tribes," is part of a broader resistance to the framework of indigenous rights that would impose stronger obligations in relation to consultation, consent, and territorial rights.

CHAPTER NINE: WOMEN'S ECONOMIC RIGHTS: PATRIARCHY, PROPERTY, AND STRUCTURAL EXCLUSION

9.1 The Gender Dimension of Economic Rights

Gender operates as a pervasive multiplier of economic rights deprivation in India. Women's economic rights violations intersect with and are compounded by caste, class, religion, and geography to produce conditions of extreme vulnerability for specific populations of Indian women, particularly Dalit women, Muslim women in minority communities, and women in rural areas, whose economic marginalization is simultaneously a product of gender discrimination, caste oppression, religious exclusion, and class exploitation.

The gender gap in India's labour force participation is among the largest in the world. India's female labour force participation rate, which was approximately 24 percent in recent years according to official ILO data, is dramatically lower than the global average and lower than most comparable middle-income countries. The specific causes of this extraordinary gender gap in labour market participation are multiple and interrelated: the cultural norms that associate women's public employment with family dishonour in significant segments of Indian society, particularly in the upper-caste Hindu and traditional Muslim communities of northern India; the

absence of safe transportation that prevents women from accessing distant employment; the inadequate provision of child care that forces women to provide unpaid care labour rather than entering the workforce; the patterns of occupational segregation that confine women to a narrow range of low-wage, high-risk, and low-security employment options; and the pervasive sexual harassment and violence in the workplace that makes formal sector employment genuinely dangerous for women without the social capital to protect themselves.

The normative and legal framework for women's economic rights in India is extensive. The Equal Remuneration Act of 1976, now consolidated into the Wages Code, prohibits discrimination in wages on the basis of sex. The Maternity Benefit Act of 1961, as amended in 2017, provides for maternity leave of twenty-six weeks. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 establishes a framework for addressing workplace sexual harassment. The Constitution's guarantee of equality (Article 14), prohibition of discrimination including on the basis of sex (Article 15), and guarantee of equal opportunity in public employment (Article 16) provide the fundamental rights framework.

But the implementation of these formal protections is deeply inadequate for the vast majority of working women in India, who are concentrated in the informal economy where regulatory oversight is minimal, where women's bargaining power is weakest, and where the social norms that underlie gender discrimination are least challenged by the operation of formal institutions.

9.2 Land Rights and Women's Economic Exclusion

The gendered pattern of land ownership in India is one of the most significant mechanisms of women's economic exclusion. India's land records consistently show that women own a dramatically smaller proportion of agricultural land than their male counterparts: official estimates suggest that women own approximately 12 to 14 percent of agricultural land, with the figure varying significantly by state and community. The actual proportion of women with effective economic control over land is likely even lower, because formal ownership may be nominal if the land is managed and disposed of by male family members.

The legal framework for women's property rights has been progressively expanded. The Hindu Succession Act of 1956, as amended in 2005, gave Hindu women equal inheritance rights with male heirs in ancestral property. The amendment was a significant legislative achievement. But its implementation depends on the willingness of families to implement it, the willingness of registering authorities to register property in women's names, and the willingness of courts to enforce it, all of which have been inadequate. In many parts of rural India, women formally inherit property under the 2005 amendment but are pressured by family and community to relinquish their shares informally, often through mechanisms that are legally questionable but practically irresistible for women without economic independence or social support.

The specific situation of Dalit women with respect to land is particularly severe. Dalit women face not only the gender-based barriers to land ownership that affect all women but the caste-specific barriers that prevent Dalit families generally from accessing land: the historical landlessness of Dalit communities, the inadequacy of land reform implementation, and the violence that frequently accompanies Dalit attempts to assert land rights in upper-caste

dominated rural areas. The Dalit woman who has inherited a legal right to land but cannot practically exercise it because the land is controlled by upper-caste landlords who will not recognize her claim, and because the police and courts in the local area are too caste-biased to enforce it, faces the intersection of gender, caste, and class oppression in its most concentrated form.

9.3 Reproductive Rights as Economic Rights

The recognition of reproductive rights as economic rights is essential to any comprehensive analysis of women's economic status in India. A woman's ability to make autonomous decisions about whether and when to have children is one of the most fundamental determinants of her economic participation and her economic security. The forced or coerced denial of reproductive choice, whether through non-consensual sterilization, denial of contraception, or the social and religious pressure that forces women into early marriage and multiple pregnancies, is simultaneously a violation of bodily integrity rights and a mechanism of economic exclusion.

India has a long and troubling history of reproductive coercion. The emergency sterilization campaigns of the 1970s, in which millions of men and women were forcibly or coercively sterilized in the pursuit of demographic control, are the most dramatic historical episode but are not the only one. Institutional pressure on women to agree to sterilization as a condition of accessing maternal health services, the pressure on lower-caste and tribal women particularly to accept sterilization in population control camps, and the incentivization of sterilization in ways that effectively coerce economically desperate women into accepting permanent contraception without genuine informed consent have continued in various forms into the present period.

The specific issue of two-child policies, which several BJP-governed states have considered or enacted as conditions for political representation, access to government employment, or access to welfare benefits, represents a contemporary form of reproductive coercion directed particularly at Muslim communities in the context of Hindu nationalist anxieties about demographic change. The Assam government's announcement that persons with more than two children would be excluded from government jobs, and similar policies in other states, imposes economic penalties for reproductive choices that violates both the right to reproductive freedom and the prohibition of discrimination under Article 15.

CHAPTER TEN: INDIA'S DEVELOPMENT MODEL AND INTERNATIONAL OBLIGATIONS

10.1 GDP Growth Without Human Development: The Sen-Dreze Analysis Revisited

The central paradox of India's development experience, which Amartya Sen and Jean Dreze identified in "An Uncertain Glory" and which remains as sharp in 2025 as when they wrote in 2013, is the extraordinary divergence between India's impressive rates of economic growth and its profoundly inadequate human development outcomes. India has been among the fastest-growing major economies in the world for extended periods, with GDP growth rates reaching

seven to eight percent annually. Yet its performance on the Human Development Index, which measures health, education, and living standards, places it at approximately 134th in the world out of 193 countries as of the 2023-2024 HDI report.

The divergence is not, as the government sometimes claims, merely a product of the base effect of a large population or the lag between economic growth and social development. It is a product of specific policy choices: the allocation of state capacity and resources toward economic growth-enabling infrastructure, including highways, airports, and industrial zones, rather than toward the human development infrastructure, including public health systems, quality public schools, and social protection floors, that would convert growth into improved human welfare.

The political economy of this divergence is transparent when the political coalition that sustains the BJP-led government is examined. The government's primary political constituencies are the dominant landowning and trading castes of northern and western India, the urban business and professional classes, and the Hindu nationalist ideological community. These constituencies benefit from economic growth, from reduced labour costs, from reduced regulatory burdens on business, and from the social order maintained by Hindu nationalist politics. They do not benefit from the expansion of public health care, from the strengthening of labour protections, or from the redistribution implied by effective social protection: their interests are served by the concentration of growth benefits rather than their diffusion.

The international financial institutions, particularly the International Monetary Fund and the World Bank, have been largely complicit in this trajectory, consistently celebrating India's GDP growth rates while being more muted about its human development failures. The World Bank's "Ease of Doing Business" index, which was discontinued following a manipulation scandal in 2021, was used by the Modi government as evidence of its economic reform success even as the indicators it measured bore no relationship to the welfare of the workers and farmers who were most affected by those reforms.

10.2 The SDGs and India's Self-Assessment

India formally committed to achieving the Sustainable Development Goals (SDGs) in 2015, adopting all seventeen goals and their 169 targets as national development objectives. The SDGs include goals directly relevant to the economic rights discussed throughout this Part: Goal 1 (No Poverty), Goal 2 (Zero Hunger), Goal 3 (Good Health and Well-Being), Goal 4 (Quality Education), Goal 6 (Clean Water and Sanitation), Goal 7 (Affordable and Clean Energy), Goal 8 (Decent Work and Economic Growth), Goal 10 (Reduced Inequalities), Goal 11 (Sustainable Cities and Communities), Goal 13 (Climate Action), and Goal 16 (Peace, Justice and Strong Institutions).

India's Voluntary National Reviews (VNRs) submitted to the UN High-Level Political Forum on Sustainable Development have presented a generally positive account of progress toward the SDGs, emphasizing programs and policy initiatives rather than outcomes, and using national average data that obscures the dramatic disparities between states, between communities, and between groups defined by caste, religion, and gender.

The independent assessment of India's SDG progress by civil society organizations, researchers, and international bodies presents a significantly different picture. The NITI Aayog's SDG India Index, which is the government's own tool for tracking state-level SDG progress, consistently shows that states including Bihar, Jharkhand, and Meghalaya are farthest from SDG achievement, corresponding to the states with the highest Dalit and Adivasi populations and the most severe economic rights failures. The goal of leaving no one behind, which is the foundational principle of the SDG framework, is being most dramatically violated in precisely the communities where economic rights violations are most acute.

Goal 16, which covers peace, justice, and strong institutions, is particularly significant from the perspective of this textbook. India's performance on the indicators associated with Goal 16, including the rule of law, access to justice, freedom from violence, and accountability of institutions, is severely compromised by the violations documented throughout this work: the UAPA's denial of bail, the custodial torture, the impunity of AFSPA, the political use of judicial and investigative institutions, and the suppression of civil society that prevents the documentation and advocacy needed to hold the government accountable.

10.3 The Optional Protocol to ICESCR and India's Resistance

India's resistance to ratifying the Optional Protocol to the ICESCR, which would establish an individual complaints mechanism for economic rights violations, is a significant and revealing choice. The Optional Protocol was adopted by the General Assembly in December 2008 and entered into force in May 2013. As of 2025, it has been ratified by 26 states, a modest number but growing.

The Optional Protocol provides that individuals and groups from states that have ratified it can bring complaints to the CESCR Committee alleging violations of the rights in the ICESCR, after exhausting domestic remedies. The Committee can then determine whether a violation has occurred and make recommendations to the state. The Protocol also establishes an inquiry procedure for grave or systematic violations and an inter-state complaints procedure.

India's failure to ratify the Optional Protocol means that the millions of Indians whose right to food, health, housing, and work are violated have no international mechanism for individual accountability available to them. The domestic remedies for economic rights violations in India, as extensively documented in this Part, are inadequate: the courts are accessible only to those with resources, the Directive Principles are non-justiciable, and the political processes for economic rights advocacy are increasingly suppressed by the FCRA restrictions and the UAPA's criminalization of civil society.

The government's stated reason for not ratifying the Optional Protocol is the standard formula of "progressive realization" and "available resources": it maintains that the ICESCR's obligations are subject to the constraints of resource availability and that external accountability for economic rights violations would impose unreasonable obligations. But this justification is circular: the Optional Protocol's accountability mechanism applies the same "progressive realization within available resources" standard that the ICESCR already requires; it merely

provides an external body to assess whether the state is in fact using the maximum of available resources and making genuine progressive steps.

CHAPTER ELEVEN: THE RIGHT TO DEVELOPMENT IN INTERNATIONAL LAW AND INDIA'S CONTRADICTIONS

11.1 The Right to Development: History and Content

The right to development was declared by the United Nations in the Declaration on the Right to Development of 1986, which was adopted by the General Assembly with 146 votes in favour, one against (the United States), and eight abstentions. The Declaration established the right to development as an inalienable human right, defined development as a comprehensive economic, social, cultural and political process that aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

The right to development in the Declaration has several key features. It is both individual and collective: individuals have a right to development and peoples as collectives have a corresponding right. It is participatory: the process of development must be conducted with the active, free and meaningful participation of the population. It is egalitarian: the benefits of development must be fairly distributed. And it is holistic: development is not merely economic growth but the constant improvement of the well-being of the entire population across economic, social, cultural, and political dimensions.

The 2030 Agenda for Sustainable Development reaffirmed the right to development as a framework for understanding the SDGs, and the recent discussions at the UN Working Group on the Right to Development have focused on translating the Declaration's principles into a binding treaty. India has been an active participant in these discussions and has consistently advocated for a legally binding instrument on the right to development.

The contradiction between India's international advocacy for the right to development and its domestic practice is stark. India's advocacy at the UN positions the right to development as requiring a more equitable international economic order, with developed countries bearing obligations to support developing countries' development through technology transfer, fair trade, debt relief, and development finance. These are legitimate and important claims. But the right to development also imposes obligations on India with respect to its own population: the obligation to pursue development processes that are participatory, egalitarian, and holistic, and that specifically benefit those at the bottom of the social and economic hierarchy.

India's development model, as documented throughout this Part and throughout this textbook, comprehensively fails this obligation. The development processes pursued under the Modi government have been non-participatory: land acquisition, forest diversion, and large infrastructure projects have been conducted without the free, prior, and informed consent of affected communities. They have been non-egalitarian: the benefits of growth have been

concentrated in the hands of a small economic elite while the costs, in the form of displacement, environmental degradation, and labour exploitation, have been borne by the poorest. And they have been destructive of the cultural and social fabric of affected communities rather than the "constant improvement of well-being" that the Declaration requires.

11.2 Judicial Review of Development Projects and Its Limitations

The Supreme Court has, through its environmental jurisprudence and through the public interest litigation cases involving major development projects, established a framework for the judicial review of development processes. The principles of public participation, environmental impact assessment, and protection of the rights of affected communities have been articulated in multiple cases. The Narmada Bachao Andolan litigation, which challenged the large dam projects on the Narmada River and which was conducted over two decades before the Supreme Court, represents the most sustained judicial engagement with the tension between development and rights.

The Narmada case's ultimate outcome, which largely upheld the dam projects while directing the governments to complete the rehabilitation of displaced communities, has been criticized by legal scholars and by the affected communities as insufficiently protective of the rights of those displaced. The NBA litigation documented extensively that the rehabilitation provisions for displaced Adivasi communities were systematically inadequate, that the promised land was not being provided, and that families were being left without the economic resources promised to them as compensation for displacement. The Court's directions for complete rehabilitation before further submergence were repeatedly not implemented, and the Court's response to non-compliance was more lenient than strict enforcement of its own orders would have required.

The broader pattern of the Supreme Court's engagement with development projects involving Adivasi displacement reveals a tension between the Court's environmental and rights jurisprudence and its deference to the government's development priorities. The Court has articulated strong principles of Adivasi land rights protection, free prior and informed consent, and the Forest Rights Act's requirements, but has been less rigorous in applying these principles when large infrastructure or mining projects with significant government interest are at stake.

CHAPTER TWELVE: INDIA'S ECONOMIC COERCION OF NEIGHBOURING STATES AND INTERNATIONAL LAW

12.1 The Legal Framework for Economic Coercion

The prohibition of interference in the internal affairs of other states and the related prohibition of coercion are established principles of customary international law, reflected in the UN Charter's Article 2(1) prohibition of the threat or use of force and in the Declaration on Principles of International Law concerning Friendly Relations among States of 1970. The Declaration specifically prohibits "economic, political or any other type of measures to coerce another State

in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."

The question of whether India's economic conduct toward its smaller neighbours constitutes impermissible coercion in international law is complex. Individual acts, such as the informal blockade of Nepal in 2015-2016, the withholding of technical cooperation on water management from Bangladesh, and the trade restrictions imposed on Sri Lanka during various political tensions, must be assessed against the specific legal standards for prohibited coercion, which require demonstration of intentional use of economic pressure to compel a change in another state's sovereign decisions.

The Nepal blockade case is the most legally compelling. If the assessment that India facilitated or imposed the blockade to pressure Nepal to amend its constitution is accurate, the conduct would fall squarely within the Declaration's prohibition of coercive economic measures to secure changes in another state's internal governance. The Nepalese government's contemporaneous characterization of the blockade as deliberate Indian pressure, supported by the timing, comprehensiveness, and political context of the disruption, provides a factual foundation for the legal argument.

The hydro-hegemony exercised by India in transboundary water relations with Bangladesh, Nepal, and Pakistan raises a different but related set of international legal questions. The UN Convention on the Law of the Non-Navigational Uses of International Watercourses, adopted in 1997 and now in force, establishes that watercourse states are required to cooperate in good faith, to exchange information about planned measures, and to refrain from actions that cause significant harm to other watercourse states. India has not ratified this Convention, which significantly reduces its formal legal accountability for transboundary water management decisions.

But the customary international law principles of equitable and reasonable utilization of international watercourses, which the ICJ recognized in the Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia) and which are reflected in the International Law Commission's draft articles on the law of the non-navigational uses of international watercourses, impose obligations on all states regardless of treaty ratification. The question of whether India's transboundary water management complies with these customary law obligations, particularly in relation to the significant harm caused to Bangladesh and Nepal by India's upstream management decisions, is a serious international legal issue that has not been adequately addressed through existing accountability mechanisms.

12.2 The India-Bangladesh Water Crisis in 2024-2025: A Rights Analysis

The catastrophic floods that affected Bangladesh in August 2024, and the subsequent political crisis that followed the fall of the Sheikh Hasina government in August 2024, created a context in which the India-Bangladesh water relationship became a central political issue in Bangladesh. The new caretaker government led by Muhammad Yunus, which assumed power following the student-led uprising that forced the resignation of Hasina, adopted a significantly less India-accommodating posture on water issues than the previous government.

The flooding crisis of August 2024 illustrated the consequences of India's unilateral management of shared water resources. As the Conversation report documented, approximately 5.8 million people were affected by the floods, and Bangladeshi officials publicly accused India of releasing excess water from the Dumbur dam on the Gomati River without adequate warning. India denied the allegations. But the broader pattern of India's failure to provide timely information about dam releases, to consult meaningfully with Bangladesh before taking water management decisions that affect downstream populations, and to negotiate in good faith on water-sharing agreements for rivers like the Teesta, represents a systematic failure of the cooperative water management framework that international law requires.

The impact of India's transboundary water management on the human rights of Bangladeshi populations is direct and severe. The Farakka Barrage's reduction of dry-season Padma River flows has been associated with agricultural land salinization in southwestern Bangladesh affecting millions of farmers, the degradation of the Sundarbans ecosystem that millions depend on for livelihood and for storm protection, and the reduction of fish stocks in affected rivers. These are economic rights violations: the right to livelihood, to food, and to an adequate standard of living of specific Bangladeshi populations are directly impaired by India's upstream water management decisions.

12.3 The BSF's Killings at the Bangladesh Border

The Indian Border Security Force's (BSF) practice of shooting Bangladeshi civilians at the India-Bangladesh border is one of the most documented and most persistent violations of international law by Indian security forces. Human Rights Watch's World Report 2026 noted that India's BSF allegedly killed at least ten Bangladeshis at the India-Bangladesh border in the first four months of 2025 alone. The organization Odhikar, which monitors human rights in Bangladesh, has documented BSF killings at the border for many years: the totals run into the hundreds over the past two decades.

The border killings occur in a variety of circumstances: some involve persons attempting unauthorized border crossing, including smugglers; others involve Bangladeshi farmers, fishermen, and children who stray near the border while engaged in lawful activities; and some involve the shooting of persons who are clearly not posing any threat to BSF personnel. The use of lethal force in circumstances where it is not necessary and proportionate to protect life violates the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the customary international law prohibition of arbitrary killing, and Article 6 of the ICCPR.

The accountability for BSF killings is, in practice, virtually non-existent. The same sanction requirement that protects soldiers acting under AFSPA operates for BSF personnel who are prosecuted for border killings: central government sanction is required, and it is virtually never given. Bangladeshi diplomatic protests about specific killings are acknowledged and then ignored. The BSF characterizes virtually all killings as the result of "hostile actions" by the persons killed, a characterization that the independent documentation by Bangladeshi human rights organizations consistently contradicts.

The BSF killings are not merely a human rights issue in the bilateral India-Bangladesh context: they reflect and reinforce India's position as a state that asserts the right to use lethal force against non-Indian civilians outside its territory in circumstances that would not justify such force under international law. This conduct is incompatible with the image of India as a responsible regional power and a champion of the rules-based international order that India's diplomacy projects internationally.

CHAPTER THIRTEEN: THE THEORY OF MINIMUM CORE OBLIGATIONS AND INDIA'S SYSTEMATIC FAILURE

13.1 Minimum Core as Legal Doctrine

The concept of "minimum core obligations" developed by the CESCR in General Comment 3 and subsequently elaborated in General Comments on specific rights, represents the most important doctrinal development in the international law of economic rights. The minimum core concept addresses the most fundamental challenge to economic rights accountability: the progressive realization standard, which allows states to implement rights gradually within available resources, seems to make all violations excusable by invoking resource constraints.

The minimum core concept establishes that for each economic right, there is an irreducible core of obligation that the state must fulfil immediately, regardless of resource constraints. For the right to food, the minimum core is freedom from hunger: no state can justifiably allow its population to starve as long as there are resources that could be used to address starvation. For the right to health, the minimum core includes essential primary health care. For the right to education, it includes access to basic literacy. For the right to housing, it includes protection from forced evictions and provision of basic shelter to the homeless.

The minimum core doctrine has been critiqued by scholars including David Bilchitz and Sandra Liebenberg, who have engaged with its application in South Africa. Bilchitz argues that the minimum core provides an important floor of protection that is insufficiently demanding: the CESCR's minimum core obligations are set at very low levels that do not adequately reflect the extent of state obligation in middle-income countries like India with significant available resources. If India's minimum core obligation with respect to the right to food is simply that no one should starve, and India fails to meet even that minimal standard, the failure is a complete and absolute violation that admits of no progressive realization excuse.

India demonstrably fails to meet minimum core obligations in multiple domains. People are dying of hunger-related causes in India despite massive food grain surpluses. Children are dying of preventable diseases in India despite publicly funded vaccination programs that do not reach all children. People are dying in hospitals that lack basic medicines and equipment despite public health budgets that could fund them if allocated differently. These are not failures of progressive realization: they are failures to meet the immediate and absolute minimum core obligations that the ICESCR imposes.

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13.2 Available Resources and the Allocation Question

The ICESCR's "maximum available resources" standard requires unpacking in the Indian context. India is not a poor country in the sense that would justify the most severe failures of economic rights implementation. It has the world's fifth largest economy and significant fiscal capacity. The question is not whether India has resources: it is how those resources are allocated.

India's military expenditure of approximately 2.4 percent of GDP, which in absolute terms amounts to over 75 billion dollars annually, dwarfs its public health expenditure of approximately 1.35 percent of GDP. India's defence procurement, including the purchase of advanced fighter aircraft, submarines, and missile systems, consumes enormous fiscal resources. The argument that India cannot afford to increase public health expenditure to the government's own target of three percent of GDP, in a context where military procurement consistently receives full funding, is not a resource constraint argument: it is a prioritization argument. And the prioritization of military capacity over health care is a choice with profound human rights consequences.

Similarly, India's tax expenditure, the revenue forgone through tax exemptions and concessions granted primarily to corporations and wealthy individuals, amounts to trillions of rupees annually. The elimination of corporate tax breaks, the imposition of a wealth tax on the ultra-rich, and the effective enforcement of existing tax obligations by the largest corporations would generate substantial additional revenue available for economic rights implementation. The government's choice not to pursue these revenue measures while claiming resource constraints in the health and education sectors is a political choice that has economic rights consequences.

Thomas Piketty's analysis of inequality and accumulation in "Capital in the Twenty-First Century" (2013) and his subsequent work with Lucas Chancel specifically on India, which documented that income inequality in India has reached levels not seen since the colonial era, provides the context within which the available resources argument must be assessed. In a society where the top one percent holds forty percent of the wealth, the claim that resources are insufficient to meet minimum core economic rights obligations is not a fact about resource scarcity: it is a fact about distributional choice.

13.3 Progressive Realization and Non-Retrogression in the Indian Context

The principle of non-retrogression, which prohibits states from deliberately taking backward steps from achieved levels of economic rights protection without compelling justification, is directly relevant to several dimensions of India's economic policy trajectory under the Modi government.

The dilution of labour protections through the four labour codes represents a potential retrogression in the right to just and favourable conditions of work. The removal of minimum support price guarantees from agricultural commodities through the farm reform laws (since repealed) would have constituted a retrogression in the economic rights of farming families. The progressive restrictions on civil society organizations through FCRA and the UAPA, which have reduced the capacity of organizations monitoring economic rights violations, represent a

retrogression in the conditions necessary for the realization of economic rights. The failure to implement the National Health Policy's commitment to increasing public health expenditure to three percent of GDP represents a failure to take steps toward progressive realization that the government itself identified as required.

The CESCR in its General Comment 3 established that the non-retrogression principle creates a presumption against retrogressive measures: if a state takes a step backward from an achieved level of protection, the burden of justification falls on the state to demonstrate that the retrogression was unavoidable, that it was carefully considered, that it was temporary, and that it was accompanied by measures to mitigate the impact on the most vulnerable. The burden has not been met in any of the cases identified above.

CHAPTER FOURTEEN: AMARTYA SEN, MARTHA NUSSBAUM, AND THE CAPABILITIES APPROACH AS AN ALTERNATIVE FRAMEWORK

14.1 Sen's Development as Freedom: The Indian Application

Amartya Sen's conceptualization of development as the expansion of real freedom, elaborated in "Development as Freedom" (1999) and in his subsequent work on justice including "The Idea of Justice" (2009), provides the most comprehensive and most India-specific alternative framework for evaluating the country's economic rights performance.

Sen's framework identifies five types of freedom whose expansion constitutes development: political freedoms (rights and liberties), economic facilities (opportunities to use resources for consumption, production, and exchange), social opportunities (arrangements for education, health care, and social security), transparency guarantees (freedom to deal with each other openly and with disclosure), and protective security (social safety nets for the most vulnerable). All five types of freedom are both instrumentally valuable for development and constitutively valuable as aspects of what it means to live well.

When applied to India in 2025, Sen's five-type framework reveals failures across all dimensions. Political freedoms are being systematically eroded through UAPA imprisonment of activists, suppression of the free press, manipulation of electoral institutions, and the de facto exclusion of Muslim citizens from full political participation. Economic facilities are distributed with extreme inequality, with the most marginalized lacking basic access to credit, markets, and economic infrastructure. Social opportunities are denied to hundreds of millions through inadequate public education and health care. Transparency guarantees are violated through the suppression of information, the politicization of statistical agencies, and the criminalization of journalism. Protective security is absent for the most vulnerable: the migrant worker caught in a lockdown without food or shelter, the farmer caught in a debt spiral without recourse, the Dalit woman whose complaint of rape is dismissed without registration.

Sen's analysis of why India has performed so much worse than China in converting economic growth into human development is particularly relevant. He identifies the decisive difference as

investment in social opportunities, particularly in education and health care: China invested heavily in basic education and public health from the beginning of its development experience, creating the human capital foundation on which economic growth subsequently built. India, constrained by elite political economy that resisted public expenditure on the poor and by the non-justiciability of economic rights, failed to make comparable investments. The result, which Sen documented and which this textbook has confirmed, is that India's growth miracle has coexisted with persistently catastrophic human development outcomes that are visible in every indicator of infant mortality, maternal mortality, literacy, and nutritional status.

14.2 Nussbaum's Political Emotions and the Affective Dimensions of Economic Rights

Martha Nussbaum's more recent work, particularly "Political Emotions: Why Love Matters for Justice" (2013) and "The Monarchy of Fear" (2018), adds an important dimension to the capabilities framework that is directly relevant to understanding both the human rights failures in India and the political economy that produces and sustains them. Nussbaum argues that the emotions of citizens, including fear, disgust, and shame on one hand, and love, compassion, and trust on the other, are politically significant in ways that affect whether democratic institutions can function to realize the conditions of justice.

The politics of Hindu nationalism, as Nussbaum has observed in her direct commentary on India, is built fundamentally on the political mobilization of fear and disgust: fear of Muslims, disgust at "polluting" minorities and lower castes, shame projected outward onto those who are defined as enemies of the Hindu nation. This emotional mobilization is not merely a cultural phenomenon: it has direct political consequences for the institutions that determine economic rights. When the electorate is mobilized by fear and disgust, it tends to support leaders who promise to protect the "real" nation from enemies, rather than leaders who propose the redistribution, the public investment, and the institutional accountability that would improve economic rights. The emotional politics of Hindu nationalism is thus structurally hostile to economic rights, not because Hindu nationalism is economically right-wing in every respect (it does maintain some welfare programs), but because its primary mobilization mechanism diverts political attention from the structural economic conditions that determine the welfare of the most vulnerable.

The political emotions of those at the bottom of the social hierarchy, the Dalit community's anger and grief, the Muslim community's fear and defiance, the Adivasi community's determination and loss, are also politically significant but are systematically suppressed or ignored in the dominant political discourse. Nussbaum's framework suggests that a politics capable of realizing justice requires the cultivation of empathy and compassion across social divisions, the development of civic institutions that create encounters between different communities, and the deliberate construction of a public culture that treats every person's suffering as politically significant. None of these conditions are being cultivated by the current Indian political environment.

14.3 The Right to Development of Marginalized Communities: A Synthesis

The synthesis that emerges from the capabilities approach, the international legal framework of economic rights, and the specific analysis of India's failures in each rights domain points toward a comprehensive vision of what India's economic rights obligations actually require. This vision can be stated across several dimensions.

The first dimension is minimum core adequacy: India must immediately ensure that no person within its jurisdiction goes hungry, lacks access to essential health care, or lacks any form of adequate shelter, regardless of their caste, religion, gender, or geographic location. The resources to accomplish this exist. The political will does not.

The second dimension is non-discriminatory access: the structural mechanisms through which caste, religion, gender, and ethnicity determine access to economic rights must be actively dismantled. This requires not merely formal anti-discrimination law but the specific, determined reform of the institutions, the public distribution system, the health care system, the labour market, the land tenure system, and the credit system that reproduce structural exclusion.

The third dimension is participatory development: the process of economic development must be conducted with the free, prior, and informed consent of affected communities, particularly Adivasi communities whose land and forest rights are at stake. Development that requires dispossession of the already marginalized cannot be justified as contributing to the general good as long as the dispossessed receive no benefit and bear all the costs.

The fourth dimension is progressive accountability: India must ratify the Optional Protocol to the ICESCR and accept international accountability for its economic rights performance. It must establish genuinely independent monitoring mechanisms for economic rights, fund civil society organizations that document violations rather than suppressing them, and create political conditions in which accountability for economic rights failures has electoral consequences.

The fifth dimension is economic restructuring: India must fundamentally restructure its fiscal priorities to allocate the maximum available resources to economic rights implementation. This requires progressive taxation, the elimination of regressive corporate subsidies, and the reallocation of military expenditure toward the human development investment that is the true foundation of national security.

CHAPTER FIFTEEN: SYNTHESIS, INTERCONNECTION, AND THE POLITICS OF ECONOMIC RIGHTS IN INDIA

15.1 The Interconnection of Economic and Civil-Political Rights: A Comprehensive View

The central analytical finding of Part Nine, taken in conjunction with the preceding eight parts of this textbook, is the systematic interconnection of economic rights failures with civil and political rights violations in India. This interconnection is not merely theoretical: it is evidenced

in specific mechanisms, specific institutions, and specific political choices that simultaneously suppress civil-political rights and deny economic rights to the same populations.

The suppression of civil society through FCRA and UAPA directly undermines economic rights: the organizations that document hunger, health care failures, and labour exploitation are the organizations whose funding is being cut and whose members are being imprisoned. The suppression of the press through defamation cases, sedition charges, and the chilling effects of the UAPA on journalists covering government policy reduces the public accountability that is the most effective mechanism for ensuring economic rights implementation. The manipulation of electoral institutions through the suppression of opposition parties, the misuse of investigating agencies, and the deployment of state resources for electoral purposes reduces the democratic accountability that would otherwise create pressure for economic rights policies.

The weaponization of the state against religious minorities, including the demolition of Muslim-owned properties, the BSF's discrimination against Rohingya and Bangladeshi Muslim deportees, and the economic boycotts of Muslim traders encouraged by Hindu nationalist organizations, directly denies economic rights to a community of two hundred million people. The caste system's continued organization of access to land, employment, credit, and public services despite formal legal abolition means that Dalit communities remain structurally excluded from economic rights realization regardless of what the Constitution provides.

The political economy that sustains these interconnected violations is, as this Part has documented, one of crony capitalism combined with majoritarian identity politics: the concentration of economic resources in the hands of a narrow corporate elite aligned with the ruling party, combined with the mobilization of the Hindu majority through communal politics that diverts attention from economic rights failures. This is not a coincidence: the identity politics serves the economic interests of the elite by preventing the formation of cross-caste, cross-religion political coalitions that would demand redistributive economic rights policies.

15.2 UN Accountability Mechanisms and Their Inadequacy

The UN human rights accountability system, as analyzed in earlier parts of this textbook, has been largely inadequate to address India's economic rights violations. The CESCR's periodic review process has consistently identified major failures but has produced no significant change. India's Voluntary National Reviews on the SDGs present a distorted picture of progress. The Optional Protocol's individual complaint mechanism, the most powerful available tool for individual economic rights accountability, has not been ratified.

The UN Special Rapporteur on the Right to Food, the Special Rapporteur on the Right to Housing, the Special Rapporteur on Adequate Housing, the Special Rapporteur on Extreme Poverty and Human Rights, and the other mandate holders whose work is directly relevant to India's economic rights situation have sought country visits to India. These visits have not been granted. The UN Human Rights Council's Universal Periodic Review process has produced recommendations regarding economic rights that India has selectively accepted and selectively implemented.

The structural problem with the UN accountability system as applied to India is that India is a significant and rising power with increasing influence in UN bodies, a large diplomatic presence, and the capacity to deflect criticism through procedural manoeuvring and coalition politics. India's voting record in UN bodies reflects a consistent prioritization of sovereignty and non-interference over robust human rights accountability, a position that serves India's interests as a state whose own conduct is subject to criticism.

The reform of the UN human rights system to make it more effective in holding powerful states accountable is a project that the academic literature in international human rights law has extensively addressed. The proposals include: making Universal Periodic Review recommendations binding rather than advisory; establishing an individual complaints mechanism for the ICESCR comparable to the ICCPR's First Optional Protocol; creating a mechanism for systematic follow-up on treaty body recommendations with graduated consequences for persistent non-compliance; and establishing a UN High Commissioner for Human Rights with stronger investigative and reporting powers than the current position. None of these reforms is imminent, and India has consistently opposed most of them.

15.3 Civil Society, Social Movements, and the Politics of Economic Rights Claim-Making

The most effective advocates for economic rights in India have been, and continue to be, the social movements and civil society organizations that work directly with and are led by the communities whose rights are violated. The Right to Food Campaign, the National Campaign for Peoples' Right to Information, the Mazdoor Kisan Shakti Sangathan, the Housing and Land Rights Network, and dozens of other organizations have been the primary drivers of the policy changes and judicial interventions that have produced the most significant economic rights gains.

The Right to Food Campaign's role in producing the PUCL Supreme Court litigation and ultimately the National Food Security Act is a model of civil society effectiveness in economic rights advocacy. The Campaign mobilized affected communities across the country, documented specific cases of starvation and food insecurity, built a national coalition of organizations, engaged constructively with the judiciary through the Supreme Court Commissioner mechanism, and translated judicial directions into political pressure for legislation.

The MKSS's campaigns for the right to information, which eventually produced the Right to Information Act of 2005, demonstrated that transparency mechanisms are an essential tool for economic rights accountability: when communities can access information about public expenditure on welfare programs, they can identify diversions and corruption that deny them their entitlements.

But these movements and organizations are under severe pressure under the current political environment. FCRA restrictions have cut the funding of civil society organizations. UAPA charges have imprisoned activists. The replacement of open civil society advocacy with government-sponsored "civil society" organizations aligned with the ruling party has distorted the political ecosystem in which economic rights claims are made. The shrinkage of democratic space for civil society documented in the HRW, Amnesty, and CIVICUS assessments of 2024, 2025, and 2026 is not merely a civil-political rights failure: it is an economic rights failure,

because it removes the primary mechanisms through which economic rights accountability is created and maintained.

15.4 The Constitution's Promise Revisited: What Genuine Commitment Would Require

The Indian Constitution's economic rights framework, despite its non-justiciable character, contains within it the seeds of a genuinely transformative vision. Ambedkar's warning that political democracy without social and economic democracy would fail has been borne out with terrible precision over seven decades. The path to making that warning's redemption possible, rather than just noting its vindication, runs through several specific reforms.

The first is constitutional: a Twenty-Ninth Amendment to the Constitution that converts specified Directive Principles, including those relating to food, health, housing, work, and education, into justiciable Fundamental Rights in Part III. This is constitutionally possible, as the Supreme Court's basic structure doctrine does not prohibit the expansion of fundamental rights, only their diminution. It would represent the completion of the project that Ambedkar began in the Constituent Assembly but could not fully achieve within its political constraints.

The second is legislative: the enactment of comprehensive economic rights legislation implementing each of the major economic rights, including a binding Right to Health Act establishing minimum standards, staffing requirements, and accountability mechanisms for public health services; a strengthened Right to Food Act with justiciable individual entitlements and accountability for exclusion errors; and a Housing Rights Act establishing procedures for challenging forced evictions and entitlements to alternative accommodation.

The third is institutional: the reform of the National Human Rights Commission to give it independent investigative capacity, the power to award binding compensation for economic rights violations, and the mandate to specifically monitor the economic rights situation of the most marginalized communities. The GANHRI's recommendation to downgrade the NHRC's status, noted in Part Nine of the Global Torture Index 2025 documents, reflects the current commission's inadequacy; what is needed is not restoration of the status quo but genuine institutional reform.

The fourth is international: India's ratification of the Optional Protocol to the ICESCR, which would create the individual complaints mechanism that currently does not exist and would subject India's economic rights performance to independent international assessment in specific cases.

The fifth is political: the building of a cross-caste, cross-religious political coalition committed to economic rights as its primary program. This is the most difficult and most fundamental requirement, because the political economy that sustains India's economic rights failures is maintained by a political coalition that benefits from those failures. Changing the political economy requires a different political coalition with different interests and a different vision of the relationship between the state and the most vulnerable.

That coalition does not currently exist in a form capable of challenging the BJP's dominance. But the historical trajectory of Indian social movements, from the dalit mobilization that produced Ambedkar's constitutional project to the farmer protests that repealed the agricultural reform laws, suggests that popular mobilization around economic rights can achieve significant policy changes when it reaches sufficient scale and sustains sufficient organization. The project of building that mobilization, grounded in the communities whose economic rights are most severely violated, connected to the intellectual traditions of economic rights jurisprudence and the international human rights framework, and articulated in the language of constitutional promise rather than radical rejection, is the most important political and legal project of contemporary India.

15.5 Concluding Analysis: Part Nine and the Forward View of This Textbook

Part Nine has conducted a comprehensive examination of economic rights in India, moving through the philosophical foundations of economic rights theory, the specific constitutional and jurisprudential frameworks for each major right, the specific failures of implementation in each domain, the political economy that produces and sustains those failures, and the international law framework within which India's performance must be assessed.

The central findings can be stated with precision:

India has approximately 195 million chronically undernourished people despite massive food grain surpluses, violating the minimum core obligation of the right to food under the ICESCR. Its public health expenditure of approximately 1.35 percent of GDP is among the lowest in the world and dramatically below both its own policy commitments and the standard required by the right to health under international law. Approximately 90 to 93 percent of its workforce is in the informal sector without effective labour law protection, violating the right to just and favourable conditions of work. Millions of households lack adequate housing, and forced evictions continue in discriminatory patterns that disproportionately affect Dalit, Muslim, and Adivasi communities. The structural mechanisms of caste and religious discrimination systematically prevent the most marginalized from accessing the economic rights that formal law nominally guarantees.

These failures are not the product of inadequate resources: they are the product of political choices about how to allocate existing resources and whose economic interests the state chooses to prioritize. They are compounded and sustained by the suppression of civil society, the criminalization of economic rights advocacy, and the replacement of democratic accountability with authoritarian management of political dissent.

The international accountability mechanisms for these failures are deeply inadequate. The CESCR's periodic review produces recommendations that are ignored. The Optional Protocol's individual complaints mechanism has not been ratified. The UN Special Rapporteurs cannot visit. The NHRC is being downgraded. And India's growing international power allows it to deflect criticism through coalition politics and sovereignty arguments.

Part Ten of this textbook will address the democratic crisis that underlies and enables both the civil-political rights violations documented in Parts One through Eight and the economic rights

failures analyzed in Part Nine. It will examine the deterioration of India's democratic institutions, the manipulation of electoral processes, the attack on judicial independence, the capture of investigative agencies, and the suppression of political opposition that together constitute what scholars have called India's "democratic backsliding." It will assess the relationship between democratic backsliding and human rights, drawing on the extensive international comparative literature on authoritarian consolidation in nominal democracies. And it will examine the prospects for democratic renewal in India, the conditions under which democratic institutions that have been captured and degraded can be restored, and the role of civil society, the international community, and internal political opposition in that renewal.

NOTE ON SOURCES AND METHODOLOGY FOR PART NINE

Part Nine has drawn on a range of primary and secondary sources across the multiple domains it addresses. The international legal framework has been analyzed through the treaty texts of the ICESCR and ICCPR, the General Comments of the CESCR Committee, and the academic literature on international economic rights law. The constitutional jurisprudence has been analyzed through the Supreme Court's decisions in public interest litigation and through the academic commentary in Indian constitutional law journals. The specific policy and implementation failures have been documented through the reports of international human rights organizations including Human Rights Watch (World Reports 2025 and 2026), Amnesty International (The State of the World's Human Rights 2026), the OMCT (Global Torture Index 2025), the Housing and Land Rights Network, and the reports of UN Special Rapporteurs. The political economy analysis has drawn on academic scholarship in political science, economics, and development studies, including the foundational work of Amartya Sen, Jean Dreze, Martha Nussbaum, and Thomas Pogge.

The methodology throughout has been consistent with the approach established in earlier parts of this textbook: the integration of primary documentation of specific violations with theoretical frameworks that explain and evaluate them, grounded in a frank acknowledgement that the purpose of this analysis is not merely descriptive but normative and political in the sense that it is committed to the truth of human rights as both aspirations and enforceable obligations. The analysis has sought to maintain the highest standards of intellectual honesty, engaging with counterarguments and acknowledging the complexity of the issues under examination, while refusing the false neutrality that treats human suffering and institutional indifference to that suffering as positions of equal moral weight.

PART TEN: THE JURISPRUDENCE OF IMPUNITY: ACCOUNTABILITY, COMPLICITY, AND THE ARCHITECTURE OF NORMALIZED VIOLENCE

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"Impunity is not a failure of law. It is a legal achievement. It is the product of deliberate institutional design, sustained political will, and the successful capture of every mechanism through which accountability could otherwise flow. In India, impunity is not exceptional. It is the rule, and the rule is deeply constitutional."

Adapted from Upendra Baxi, The Future of Human Rights, Third Edition

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INTRODUCTORY COMMENTARY: THE PROBLEM OF IMPUNITY AS JURISPRUDENTIAL PHENOMENON

This tenth part of the textbook turns from the cataloguing of violations, which the preceding nine parts have undertaken in considerable breadth and depth, to a different and in some respects more fundamental question: why do these violations persist? Why does a state that possesses a written constitution of extraordinary sophistication, a Supreme Court with expansive powers of judicial review, a National Human Rights Commission, a dozen specialized statutory commissions, and a formally independent prosecutorial apparatus continue to produce, on an industrial scale, the violence, discrimination, dispossession, and exclusion that the preceding chapters have documented?

The answer cannot be found in any single institutional failure or political decision. It must be sought in the deeper architecture of what scholars working in the tradition of critical legal theory have called the system of impunity: the interlocking complex of legal rules, institutional cultures, political incentive structures, judicial behaviors, prosecutorial habits, police practices, and ideological formations that together ensure that state actors who commit human rights violations, and powerful private actors whose violence the state enables or ignores, face no meaningful consequence for their actions.

This part develops that analysis through thirteen chapters that move progressively from the theoretical foundations of impunity analysis through its institutional manifestations and toward a synthetic account of what the pattern reveals about the character of the Indian state and the possibilities for accountability. The theoretical frameworks employed draw on legal philosophy, political sociology, transitional justice scholarship, postcolonial theory, and the rapidly developing literature on democratic backsliding and competitive authoritarianism. The empirical material draws on recent reports from 2024, 2025, and 2026 from major human rights organizations, UN treaty body findings, scholarly research, and documented case histories.

No punctuation convention stands in isolation from substance. The architecture of this part is designed to do what good academic legal writing should always do: to make visible what the system of official discourse systematically conceals, to name the unnameable with precision, and to demand from the reader the intellectual discomfort that honest engagement with structural evil always produces.

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CHAPTER ONE: THEORIES OF IMPUNITY: FROM PHILOSOPHY TO STRUCTURAL ANALYSIS

1.1 Impunity as a Legal and Philosophical Category

The word impunity derives from the Latin impunitas, meaning freedom from punishment, and the concept has been central to discussions of justice and accountability since antiquity. In Plato's Republic, Thrasymachus argues that justice is nothing but the advantage of the stronger, and that the truly rational person, if they could act unjustly without detection or punishment, would always do so. This argument, which Socrates rejects through the dialogical method of the Republic, contains within it the implicit claim that the prevention of injustice depends entirely on the reliability of consequences. If powerful actors can act with impunity, the normative framework collapses into mere rhetoric.

The Roman tradition developed this insight through the concept of aequitas (equity) and the ideal of a legal order in which the same rules applied equally to all, from the emperor to the slave. This ideal was always honored more in the breach than in the observance, but its articulation established the principle that accountability is not separable from justice: a legal system in which some categories of actor are above consequences is not a legal system in any meaningful sense. It is a system of organized power claiming the legitimacy of law.

In modern legal philosophy, the most rigorous theoretical treatment of impunity comes from the intersection of international law, transitional justice scholarship, and what has been called the accountability norm. Naomi Roht-Arriaza, in her foundational 1995 work Impunity and Human Rights in International Law and Practice, traced the emergence of a principle in international law that states have an obligation not merely to prohibit human rights violations but to investigate, prosecute, and punish them when they occur. This obligation, which Roht-Arriaza derived from treaty provisions, the jurisprudence of international human rights bodies, and customary international law, represents a significant development in international human rights theory: it shifts the analysis from the state as a potential violator to the state as a mandatory enforcer of accountability for violations, whether committed by the state itself or by private actors.

The international legal basis for this accountability obligation is now extensively documented. The UN Human Rights Committee, interpreting Article 2(3) of the International Covenant on Civil and Political Rights, has held that states must not only prohibit violations but must investigate them effectively, ensure that perpetrators are prosecuted, punish them appropriately, and provide reparations to victims. The Committee Against Torture, interpreting the UN Convention Against Torture, has developed an even more detailed set of accountability obligations. The Inter-American Court of Human Rights, which does not have jurisdiction over India but whose jurisprudence on accountability has been enormously influential on the development of international human rights law, has held in a series of landmark decisions, including Velasquez Rodriguez v. Honduras (1988) and Barrios Altos v. Peru (2001), that amnesties for serious human rights violations are incompatible with international human rights obligations.

The concept of impunity has been given its most careful legal definition by the UN Special Rapporteur on Impunity, Louis Joinet, in his 1997 report to the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities. Joinet defined impunity as the impossibility, de jure or de facto, of bringing the perpetrators of violations to account, whether in criminal, civil, administrative, or disciplinary proceedings, since they are not subject to any inquiry that might lead to their being accused, arrested, tried, and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims. This definition is important because it is explicitly concerned with de facto as well as de jure impunity: it recognizes that formal legal systems may maintain the nominal possibility of accountability while systematically ensuring that accountability does not occur in practice.

De facto impunity is precisely what characterizes the Indian system. There is no de jure amnesty for torture in India. There is no explicit legal provision that prohibits the prosecution of soldiers who kill civilians in fake encounters. There is no statute that formally exempts police officers from criminal liability for custodial deaths. What there is, instead, is an institutional architecture that achieves functionally identical results through different means: through the requirement of prior sanction for prosecution of armed forces personnel under AFSPA, which has never been granted; through the systematic failure of police to register FIRs against their own colleagues; through the endemic culture of witness intimidation and evidence tampering in cases where police officers are accused; through the impossibly long delays in the criminal justice system that exhaust victims and their families before cases reach trial; and through the pattern of judicial deference to executive claims of necessity and security that has prevented courts from meaningfully reviewing AFSPA operations or UAPA detentions.

1.2 The Political Economy of Impunity: Why It Is Functional

Impunity, when analyzed from the perspective of political economy, is not a pathology or a failure. It is a functional product of the distribution of political power. This insight, developed in the political science literature on governance and accountability by scholars including Barbara Geddes, Steven Levitsky, and Lucan Way, and in the legal literature by scholars including Ruth Grant and Robert Keohane on accountability relationships, is fundamental to understanding why India's impunity system is so durable.

The political economy argument runs as follows. Human rights violations, whether torture, extrajudicial killing, communal violence, caste-based discrimination, or economic exploitation, are not random events. They occur within political systems in which certain actors benefit from violations. Police officers who commit torture benefit professionally: confessions extracted through torture close cases quickly, produce results that their superiors reward, and demonstrate the kind of assertive "crime-fighting" that generates career advancement. The absence of accountability for torture therefore functions as a subsidy to a particular style of policing that is valued within the institutional culture.

Politicians who mobilize communal violence benefit electorally: the polarization of communities along religious lines generates reliable blocs of voters, motivates base mobilization, and displaces attention from economic failures. The absence of accountability for inciting communal violence, therefore, functions as a subsidy to a particular style of political mobilization.

Corporations that profit from the dispossession of Adivasi communities benefit economically: access to mineral resources and forest land at below-market prices generates enormous rents, and the political connections that enable this dispossession are maintained through campaign contributions and revolving-door employment. The absence of accountability for corporate complicity in dispossession functions as a subsidy to a particular model of capital accumulation.

In each of these cases, the absence of accountability is a benefit to politically powerful actors. Those who suffer the costs, the tortured prisoner, the victims of communal violence, the dispossessed Adivasi, are by definition among the most politically marginal members of the society. The distribution of costs and benefits creates a political-economic equilibrium in which impunity is stable: those who could change it benefit from it, and those who suffer from it are too politically weak to demand change.

This analysis connects directly to a strand of political philosophy associated with Philip Pettit and his concept of domination in the republican tradition. Pettit argues that freedom is not merely the absence of actual interference, as liberals in the tradition of Isaiah Berlin have argued, but the absence of the capacity for arbitrary interference. Domination exists when one party has the capacity to interfere arbitrarily in the choices of another, regardless of whether they actually exercise that capacity in any given moment. By this definition, impunity is itself a form of domination: it gives state actors and politically connected private actors the capacity to interfere arbitrarily in the lives of vulnerable people, safe in the knowledge that they will not face consequences. And the victims of this domination are unfree not only when they are actually violated but in every moment, because they live under the shadow of arbitrary power that could be exercised against them at any time.

1.3 Structural Impunity: The Concept and Its Application to India

The sociological literature on human rights violations has developed the concept of structural impunity to capture the ways in which the systemic features of a society produce impunity independently of the specific intentions of individual actors. Stanley Cohen, in his foundational work States of Denial: Knowing About Atrocities and Suffering (2001), developed a theory of how individuals and institutions manage to deny, ignore, or normalize evidence of violations that would otherwise demand moral response. Cohen identified three forms of denial: literal denial (the act did not happen), interpretive denial (the act happened but it means something different from what it appears to mean), and implicatory denial (the act happened and means what it appears to mean, but the implications for action do not follow).

The Indian state has deployed all three forms of denial in response to documented violations. Literal denial is most visible in response to accusations about Kashmir: the government consistently denies the scale of enforced disappearances, the extent of custodial torture, and the findings of independent investigations. Interpretive denial is most visible in response to accusations about communal violence: the government reinterprets riots as mutual conflicts rather than one-sided attacks on minorities, reinterprets vigilante mob violence as spontaneous community action rather than organized Sangh Parivar activity, and reinterprets "bulldozer justice" as routine enforcement of municipal building regulations rather than targeted religious persecution. Implicatory denial is most visible in response to international human rights

criticism: the government acknowledges that violations may occur but denies that they require systemic reform, attributing them to individual bad actors and insisting that existing legal and institutional mechanisms are adequate.

Cohen's analysis suggests that the denial system, once established, becomes self-reinforcing. Institutions develop what he calls organizational denial: standard operating procedures, hierarchical reporting structures, and professional cultures that filter out information about violations before it reaches those at the top who could take action. Police forces do not report accurately on their own torture practices. Military units do not report accurately on their own encounter killings. Political parties do not report accurately on their own members' hate speech and incitement. The result is a system in which those formally responsible for accountability are systematically insulated from the information that would trigger accountability obligations.

1.4 Comparative Frameworks: Impunity and Its Variations Across Democratic Systems

It is important, for analytical rigor, to situate India's impunity system comparatively. All states, including established liberal democracies, experience some degree of impunity for state actor violations of rights. The United States military's impunity for torture at Guantanamo Bay and Abu Ghraib, the United Kingdom's suppression of the truth about the Bloody Sunday killings for decades, France's suppression of accountability for crimes committed in Algeria, these are all examples of impunity operating within formally democratic, rights-respecting legal systems.

The comparison illuminates what is distinctive about India. First, the scale: the number of documented violations of serious human rights, including custodial torture, extrajudicial killings, and mass atrocities, is vastly greater in India than in any comparable democracy. The Global Torture Index 2025 documented that the National Human Rights Commission reported approximately 2,739 custodial deaths in 2024 alone, with approximately 2,400 the year before. These are official figures, almost certainly significant undercounts. No comparable democratic state comes close to these numbers.

Second, the institutional character: in most established democracies, impunity is contested. Independent prosecutors, investigative journalists, civil society organizations, and opposition political parties create ongoing pressure for accountability that sometimes succeeds. In India, as the preceding chapters have documented, the institutions of accountability have been progressively captured, weakened, or intimidated. The National Human Rights Commission has been recommended for downgrading to B status by the Global Alliance of National Human Rights Institutions in March 2025 precisely because of concerns about its independence and effectiveness. The press has been captured, intimidated, or shut down. Civil society has been strangled by the FCRA. And the opposition political parties are themselves deeply compromised on many of the issues on which accountability is most urgently needed.

Third, the ideological character: in most established democracies, even those with significant impunity problems, the dominant ideology nominally supports accountability. Politicians who defend torture, celebrate extrajudicial killings, or actively promote communal violence face at least rhetorical condemnation and at least some political cost. In India under the current BJP government, the ideology of Hindu nationalism actively celebrates certain forms of impunity: the

"encounter specialist" police officer who kills alleged criminals is a folk hero in BJP political culture; the demolition of Muslim homes is celebrated with a "bulldozer" image that has become a BJP electoral symbol; and the cow vigilante who beats or kills Muslims suspected of beef possession is often defended by local BJP politicians.

This ideological endorsement of impunity marks a qualitative shift from the impunity that operates quietly, through institutional dysfunction, to impunity that operates openly, as a statement of political values.

CHAPTER TWO: THE NATIONAL HUMAN RIGHTS COMMISSION: FROM WATCHDOG TO REGIME INSTRUMENT

2.1 The Institutional History and Mandate of the NHRC

The National Human Rights Commission of India was established in October 1993 under the Protection of Human Rights Act of 1993. Its establishment was partly a response to international pressure following the Kashmiri insurgency and the documented human rights violations associated with the security response to it, and partly a domestic response to growing civil society pressure for a dedicated human rights oversight institution. The NHRC was modeled on the Paris Principles, adopted by the UN General Assembly in 1993, which set out standards for the independence and effectiveness of national human rights institutions.

The Paris Principles require that national human rights institutions have a mandate as broad as possible, that they be composed of members with pluralistic representation of civil society, that they function independently of the government, that they have adequate infrastructure and resources, and that they be empowered to investigate complaints and report publicly on their findings. India's NHRC, as established by the 1993 Act, formally meets many of these criteria. Its chairperson must be a retired Chief Justice of India, and its members must include retired Supreme Court judges, persons having knowledge or practical experience in matters relating to human rights, and representatives of the National Commission for Minorities, the National Commission for Scheduled Castes, and other specialized commissions.

The NHRC has a broad mandate: it can inquire into complaints of human rights violations, visit any institution under the control of the state government where persons are detained, review safeguards provided by law for the protection of human rights, and make recommendations to the government. It can summon witnesses, compel the production of documents, and receive complaints from any individual or group. It has the power to award compensation to victims. These are substantial powers on paper.

In practice, the NHRC has been one of the most spectacular failures of institutional design in Indian governance.

2.2 The NHRC's Structural Limitations

The first and most fundamental structural limitation of the NHRC is its lack of jurisdiction over the armed forces. The Protection of Human Rights Act explicitly excludes complaints against the armed forces from the NHRC's jurisdiction, though it can seek reports from the Central Government and make recommendations. This exclusion means that precisely the area of the most serious and systematic human rights violations in India, the conduct of the army, CRPF, and BSF in conflict zones including Kashmir, the northeast, and the central Indian Maoist belt, is largely beyond the Commission's reach. The exclusion is not incidental or accidental: it is a deliberate structural decision to protect the most systematically impunity-protected sector of Indian state action from any independent oversight.

The second structural limitation is that the NHRC can only make recommendations; it cannot enforce its own decisions. It can award compensation, but it cannot compel payment. It can recommend prosecution, but it cannot compel the state government or prosecuting authorities to act. In cases where state governments simply ignore NHRC recommendations, which is a common occurrence in BJP-governed states, the Commission has no effective response. It can make another recommendation, issue another report, and invite the government to respond. The government can ignore that too.

The third structural limitation is the appointment process, which has made the Commission vulnerable to executive capture. The chairperson and members are appointed by a committee that includes the Prime Minister, the Home Minister, and the Speaker of the Lok Sabha, among others. The Cabinet effectively controls the appointments. This makes it virtually inevitable that the NHRC's leadership reflects the political preferences of the government in power. A commission whose leadership is appointed by the government is not independent of that government, regardless of formal statutory guarantees.

2.3 The GANHRI Downgrading: International Recognition of Institutional Failure

The most significant recent development in the history of the NHRC is the recommendation by the Global Alliance of National Human Rights Institutions to downgrade India's NHRC from A status to B status at its 45th session held in March 2025. The GANHRI is the international accreditation body for national human rights institutions, and its A and B status designations carry significant practical consequences: A status institutions can speak at the UN Human Rights Council, participate in its Universal Periodic Review process, and engage substantively in UN human rights mechanisms, while B status institutions have only observer status.

The GANHRI's recommendation was based on three categories of concern. First, concerns about the independence of the NHRC from the government, specifically relating to the appointment process and the composition of the Commission's membership. Second, concerns about the NHRC's transparency, including its failure to publish adequate information about its proceedings and decisions. Third, concerns about its effectiveness, including the failure to address serious human rights violations, particularly in conflict-affected areas.

The downgrading recommendation represents an important international validation of what Indian civil society organizations have been arguing for years: that the NHRC is not a genuine human rights institution but a regime instrument, an apparatus that provides the international appearances of human rights oversight while systematically failing to provide its substance.

The Indian government's response was predictably dismissive. The Ministry of External Affairs described the GANHRI's concerns as based on incomplete information and stated that the NHRC operates in full conformity with the Paris Principles. This response, in itself, illustrates the institutional culture of denial analyzed in the previous chapter: faced with credible international criticism of a governance failure, the government's reflex is not to examine the substance of the concern but to deny its validity.

What makes the GANHRI downgrading particularly significant is its timing. It came in March 2025, just five months after India was elected to the UN Human Rights Council for the 2026-2028 term in October 2024. India's election to the HRC while its own national human rights institution was being recommended for downgrading captures, in a single juxtaposition, the fundamental gap between India's international self-presentation and its domestic human rights reality. India presents itself to the international community as a rights-respecting democracy deserving of a seat at the table of global human rights governance, while the international accreditation body for national human rights institutions is simultaneously concluding that its own domestic human rights watchdog lacks independence, transparency, and effectiveness.

2.4 The Specialized Commissions: A Pattern of Deliberate Dysfunction

The NHRC is one of several specialized commissions with human rights mandates. The National Commission for Minorities, the National Commission for Scheduled Castes, the National Commission for Scheduled Tribes, the National Commission for Women, the National Commission for Backward Classes, and the National Commission for Protection of Child Rights all have mandates to protect and promote the rights of specific vulnerable groups. In theory, this network of specialized commissions provides comprehensive institutional coverage for human rights oversight.

In practice, all of these commissions share the NHRC's fundamental defects, which is that they depend on government appointments, government funding, and government cooperation for their effectiveness, and that the governments which control them often have political interests directly opposed to vigorous enforcement of minority and Dalit rights.

The National Commission for Minorities, whose function is to monitor the implementation of safeguards provided by the Constitution and laws for the protection of minority communities, has been rendered almost entirely ineffective by the appointment of members who share the Hindu nationalist government's view that minority communities do not face systematic discrimination. Under the BJP government, the NCM has consistently failed to respond to documented incidents of communal violence, mob lynching, anti-conversion law abuse, and targeted demolitions. The very commission mandated to protect India's Muslim minority from discrimination has, under BJP-aligned leadership, functioned as an institution that validates the government's narrative that minorities are not systematically oppressed.

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The National Commission for Scheduled Castes, which has the constitutional status of a constitutional body under Article 338, should in principle be a powerful advocate for Dalit rights. But the Commission's effectiveness has been systematically compromised by political appointments of individuals aligned with the ruling party, inadequate staffing and resources, and the fundamental problem that investigating violations by police and other state actors requires institutional independence from the government that controls those actors, a prerequisite that the Commission's appointment process cannot guarantee.

The pattern across all these specialized commissions points to a systemic design choice: institutions that nominally provide accountability are designed in ways that ensure they cannot effectively perform that function, and are populated with personnel who will not even attempt to. This is not accidental institutional weakness. It is deliberate institutional capture.

CHAPTER THREE: COMMISSIONS OF INQUIRY: TRUTH-AVOIDANCE AS STATE STRATEGY

3.1 The Indian Tradition of Commissions of Inquiry

India has an extensive, almost compulsive, tradition of appointing judicial commissions of inquiry in the aftermath of serious human rights violations. The 1984 anti-Sikh massacre, which killed an estimated 3,000 Sikhs in Delhi and other cities following the assassination of Indira Gandhi, was the subject of multiple commissions of inquiry, including the Misra Commission, the Kapoor-Mittal Committee, and the Nanavati Commission. The 2002 Gujarat pogrom, in which approximately 2,000 Muslims were killed in organized violence, was the subject of the Shah-Nanavati Commission. The Hashimpura massacre of 1987, in which members of the Provincial Armed Constabulary allegedly killed 42 Muslim men and dumped their bodies in canals near Muradnagar and Ghaziabad, was the subject of a CBI investigation. The Manipur killings of 2023 and 2024 have been the subject of a Supreme Court-appointed committee.

On first appearance, this tradition suggests that India has institutional mechanisms for investigating major human rights violations. On careful examination, it reveals precisely the opposite: that commissions of inquiry function as a mechanism for avoiding, rather than providing, meaningful accountability.

The academic literature on this dynamic is illuminating. A comprehensive study published in 2024 in the journal Third World Quarterly examined the contributions made by commissions of inquiry to transitional justice in India. The study found that commissions of inquiry are routinely criticized for failing to uncover the truth about atrocities committed by the state and politically powerful actors, presenting their findings in an untimely fashion, or providing justice for the victims. The study documented a consistent pattern: commissions are established with significant fanfare, proceed at a pace that allows political passions to cool and public attention to shift, produce reports that identify individual bad actors rather than systemic failures, recommend prosecutions that are never pursued, and are ultimately ignored by the governments that established them.

3.2 The 1984 Anti-Sikh Massacre and the Long Game of Delayed Accountability

The 1984 massacre of Sikhs in Delhi and other cities is the best-documented example of the commission-of-inquiry approach to accountability failure. The chain of inquiries lasted over two decades. The Misra Commission, established within weeks of the massacre, reported in 1986. Its report was widely criticized for whitewashing Congress party politicians' role in organizing and directing the violence. The Kapoor-Mittal Committee of 1987 identified a larger number of cases for investigation. The Nanavati Commission, established in 2000, finally acknowledged what civil society organizations had been saying for sixteen years: that Congress politicians, particularly Jagdish Tytler and Sajjan Kumar, had played a role in directing the violence.

But the gap between acknowledgment and accountability remained vast. Jagdish Tytler faced no prosecution for decades. Sajjan Kumar was finally convicted by a Delhi court in 2018, thirty-four years after the massacre, and began serving a life sentence in 2019. This prosecutorial outcome, while welcome, came after decades of political protection for the accused, the death of thousands of witnesses and survivors, and the passage of sufficient time that the political costs of accountability had largely dissipated.

The 1984 case illustrates a consistent pattern in India: accountability, when it comes at all, comes so late that it functions more as historical record-keeping than as deterrence or genuine justice. And for every case where even this delayed accountability is eventually delivered, there are dozens where it is never delivered at all.

3.3 The Gujarat 2002 Pogrom: The Manipulation of Accountability Mechanisms

The 2002 Gujarat pogrom, which occurred during the first term of Narendra Modi as Chief Minister of Gujarat, remains the most politically consequential human rights accountability case in contemporary India, and the most revealing illustration of how accountability mechanisms can be systematically manipulated.

In the immediate aftermath of the pogrom, Modi's state government was widely accused of having deliberately withheld police action in the early days of the violence, effectively allowing the mobs to operate with impunity. Multiple investigations, including by the Citizens' Tribunal on Communal Violence chaired by former Justice V.R. Krishna Iyer, documented evidence of organized state complicity. The National Human Rights Commission made a remarkable intervention, going to the Supreme Court directly rather than routing its concerns through the state government.

The Supreme Court's intervention was crucial. Facing a state government that was actively obstructing investigation and protecting accused perpetrators, the Supreme Court established the Special Investigation Team (SIT) chaired by a retired CBI Director, R.K. Raghavan, to investigate the violence. The SIT's mandate eventually included a specific investigation into allegations against Modi himself.

In 2012, the SIT gave Modi a clean chit, concluding that there was insufficient evidence to prosecute him. The SIT's report was challenged by Zakia Jafri, the widow of former Congress

MP Ehsan Jafri who was killed in the Gulberg Society massacre, through a legal complaint and subsequent petition. The Supreme Court ultimately dismissed Zakia Jafri's petition in June 2022, in a judgment that civil society organizations and legal scholars widely criticized as inadequate. The judgment ruled that there was no evidence of a larger conspiracy involving the state government, relying substantially on the SIT's investigation, while largely ignoring evidence presented by the petitioner regarding the SIT's own methodological and evidentiary failures.

The Gujarat accountability story contains several important lessons for the jurisprudence of impunity. It demonstrates that even when the highest court intervenes to establish an independent investigation, the investigation process itself can be manipulated by the political environment in which it operates. It demonstrates that the acquittal or "clean chit" process can function as a legitimizing mechanism for a figure who goes on to become Prime Minister, effectively converting the absence of proven guilt into a political asset. And it demonstrates that civil society persistence, in the form of Zakia Jafri's multi-decade legal battle, while admirable and necessary, is ultimately insufficient in the face of institutional resistance.

3.4 The Manipur Atrocities and the Limits of Judicial Committees

The Manipur crisis of 2023-2025, which involved the systematic ethnic violence between the Kuki-Zo and Meitei communities with documented state complicity on the Meitei side, has been monitored by a Supreme Court-appointed three-member committee. The committee has made multiple site visits, collected testimony, and produced reports that have been filed before the Court.

But the committee's work has faced the fundamental limitation that afflicts all judicial accountability mechanisms in the current political environment: the central government's refusal to acknowledge the systemic character of the violence, let alone take responsibility for its role. In February 2025, the central government imposed President's Rule in Manipur, acknowledging the complete breakdown of governance under the BJP state government, but the imposition came after more than a year and a half of documented violence that had already killed over 260 people and displaced more than 60,000. And even after the imposition of President's Rule, the accountability gap remained: no senior state official, no leader of any armed group with documented involvement in the violence, and no member of the security forces with documented involvement in atrocities has been brought to criminal trial.

The Manipur case illustrates what might be called the accountability half-life problem: the political window for genuine accountability narrows rapidly as time passes from the original events. Witnesses are intimidated, flee, or die. Evidence degrades. Public attention shifts. The political coalition that would have been required to sustain prosecutorial action dissolves. What remains is a judicial committee that continues to document violations and a court that continues to express concern, while on the ground, the perpetrators remain at liberty and the victims remain uncompensated.

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CHAPTER FOUR: TRANSITIONAL JUSTICE WITHOUT TRANSITION: INDIA'S ACCOUNTABILITY DEFICIT IN THEORETICAL PERSPECTIVE

4.1 The Concept of Transitional Justice and Its Applications

Transitional justice is a field of inquiry and practice that emerged in the 1980s and 1990s in response to the question of how societies should deal with legacies of systematic human rights violations when they undergo political transitions, typically from authoritarian to democratic governance. The canonical cases are the South African Truth and Reconciliation Commission, the Nuremberg and Tokyo tribunals after World War Two, the International Criminal Tribunal for the former Yugoslavia, the Argentinian prosecution of the military junta, and the Rwandan gacaca courts.

The transitional justice literature, drawing on the work of scholars including Ruti Teitel, Pablo de Greiff, Naomi Roht-Arriaza, Priscilla Hayner, and Jon Elster, has identified four core mechanisms of transitional justice: criminal prosecution, truth commissions, reparations programs, and institutional reform. These mechanisms are understood as complementary rather than alternative: the most effective responses to historical atrocities combine elements of all four. Criminal prosecution addresses individual criminal responsibility but typically cannot address the full scale of systematic violations. Truth commissions can address wider patterns of violation and provide acknowledgment for victims who cannot be served through individual prosecutions. Reparations address the material and moral harm suffered by victims. Institutional reform addresses the structures that made violations possible, attempting to prevent their recurrence.

The theoretical claim of transitional justice is that these mechanisms serve multiple overlapping goals simultaneously: justice for victims, deterrence of future violations, historical truth, reconciliation between perpetrators and victims, and the consolidation of democratic institutions. The empirical evidence for the achievement of these goals is contested, but the normative framework is widely accepted.

4.2 India's Paradox: Continuous Violations Without Transition

The concept of transitional justice was designed for societies emerging from clear periods of authoritarian rule into democracy: post-apartheid South Africa, post-junta Argentina, post-Pinochet Chile. India presents a theoretical paradox: it has experienced systematic, large-scale, politically organized human rights violations throughout its post-independence history, including multiple episodes of mass atrocity, but it has never experienced the kind of political "transition" that transitional justice frameworks contemplate. It has been continuously a formal democracy, with regular elections and constitutional institutions, for the entire period.

This paradox has led some scholars to argue that the transitional justice framework cannot be applied to India at all, because transitional justice presupposes a before-and-after structure that India's continuous democratic-constitutional form does not provide. This argument, while not without force, ultimately proves too much. The systematic character of certain violations in India, including the 1984 anti-Sikh massacre, the 2002 Gujarat pogrom, the decades of atrocities in Kashmir, and the systematic torture in police custody, is not qualitatively different from the

violations that transitional justice mechanisms have been applied to in other contexts. The absence of a formal political transition does not negate the need for accountability; it simply means that accountability must be pursued within, rather than after, the regime that committed or enabled the violations.

Scholars working on what has been called "justice in ongoing transitions" or "in-regime accountability" have developed frameworks for thinking about accountability mechanisms that can operate without the regime change that classical transitional justice assumes. Zinaida Miller's work on colonial transitional justice and Erin Daly and Jeremy Sarkin's comparative work on reconciliation in divided societies are particularly relevant. Their analysis suggests that formal transitional mechanisms, including truth commissions and specialized prosecutorial bodies, can be established even within an ongoing democratic framework, if the political will to establish them can be generated.

In India, that political will does not currently exist, for the reasons analyzed in Chapter One's discussion of the political economy of impunity. But it is important to note that this is a political failure, not an inherent impossibility. The constitutional and institutional framework exists, or could be created, to establish a truth commission for Kashmir, a special prosecution for 1984, a systematic reparations program for victims of custodial torture. The absence of these mechanisms is not a consequence of constitutional impossibility but of political choice, and the character of that choice reflects, as this entire textbook argues, the deep alignment between the dominant political formation and the structures that produce violations.

4.3 Reparations in Theory and Their Absence in India

The question of reparations deserves particular attention because it is perhaps the aspect of accountability that is most directly related to the lived experience of victims and survivors. Criminal prosecution, while important, addresses the perpetrator rather than the victim. Truth commissions, while important, provide acknowledgment rather than material remedy. Reparations directly address the material and moral harm suffered by victims, providing at least partial restoration of what was taken.

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2005, establish a comprehensive framework of reparative obligations. The Basic Principles identify five forms of reparation: restitution (restoring the victim to the situation before the violation), compensation (for any economically assessable damage), rehabilitation (medical and psychological care and social services), satisfaction (including truth-telling, public acknowledgment, memorialization, and guarantees of non-recurrence), and guarantees of non-recurrence (institutional reforms to prevent future violations).

India's record on reparations is, with rare exceptions, deplorable. In the aftermath of the 1984 massacre, compensation payments were eventually made to some victims, but the amounts were widely regarded as grossly inadequate and the process was deeply flawed, with many families receiving nothing at all. For victims of police torture and custodial death, the compensation

available through the NHRC and state human rights commissions is typically in the range of a few hundred thousand rupees, amounts that are insufficient to address the full scope of the harm suffered and that carry no admission of state responsibility. For victims of communal violence, the rehabilitation programs that have been established have been inadequate, delayed, and politically distorted. For the Kashmiris who have suffered decades of AFSPA-enabled violations, no reparation program of any kind has been established.

The Supreme Court's interventions in public interest litigation have occasionally produced compensation orders, but these orders are made in individual cases and do not address the systemic character of violations. The right to compensation for state-inflicted harm exists, implicitly, in Article 21's guarantee of the right to life and liberty, and the Supreme Court recognized a constitutional right to compensation for unlawful detention and police excesses in Rudul Shah v. State of Bihar (1983) and subsequent decisions. But the exercise of this right requires approaching the Supreme Court, a barrier that is practically insuperable for most victims of human rights violations.

4.4 The Memory Politics of Atrocity: Who Gets to Remember What

Alongside the formal mechanisms of accountability, the politics of historical memory plays a crucial role in either sustaining or undermining the conditions for accountability. Who gets to narrate the past, which atrocities are officially acknowledged and which are suppressed, what monuments are built and what erasures are enforced, these questions of memory politics are directly relevant to the possibility of justice.

The Hindu nationalist project has developed a sophisticated approach to historical memory that systematically downplays or dismisses atrocities against minorities while emphasizing historical Muslim oppression of Hindus. The narrative of "Hindu victimhood" at the hands of medieval Muslim rulers is central to BJP political culture, and it serves a dual function: it provides historical justification for contemporary anti-Muslim hostility, and it crowds out the historical record of twentieth and twenty-first century state violence against minorities.

This memory politics is institutionalized in the curriculum changes introduced in BJP-governed states and, since 2023, in the revised National Curriculum Framework. The textbooks that hundreds of millions of Indian children read are being progressively purged of content that acknowledges Dalit oppression, inter-community violence by Hindu majority groups, and the contributions of Muslim scholars and rulers to Indian civilization, while simultaneously amplifying narratives of Hindu historical grievance and BJP political achievements.

The stakes of this memory politics for accountability are direct. A society that is prevented from accurately remembering its own history of atrocity is a society that lacks the basic epistemic foundation for accountability. You cannot demand justice for what you have been taught did not happen, or what you have been taught was justified.

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CHAPTER FIVE: THE CULTURE OF ENCOUNTERS: EXTRAJUDICIAL KILLING AS STATE POLICY

5.1 The "Encounter" as Institution

The word "encounter" in Indian police and public discourse refers to what is formally described as a confrontation between police and alleged criminals or militants in which the alleged criminal is killed in self-defense by police. In most cases, the reality is different: "encounters" are extrajudicial executions, staged shootings in which police kill a person in custody or under detention and then construct a post-hoc narrative of a "genuine encounter" to cover the killing.

The encounter as institution is not specific to any particular state or period in Indian history. But it has become particularly systematic and politically celebrated in Uttar Pradesh under the government of Chief Minister Yogi Adityanath, which has governed since 2017. The South Asia Justice Campaign's 2026 Annual Report documented that at least 48 people were killed in police encounters in Uttar Pradesh in 2025, the highest annual toll since Adityanath took office, with Muslims disproportionately represented among the victims.

The documented pattern of UP encounters is consistent with extrajudicial execution rather than genuine self-defense: victims are often arrested and held in custody before the alleged encounter, the "weapons" recovered at encounter sites are often unregistered or implausible, the forensic evidence rarely supports the police version of events, and the psychological implausibility of criminals repeatedly choosing to engage armed police officers in gunfights rather than surrendering is never explained.

The political celebration of the encounter culture is as important as the killings themselves. BJP politicians, including the Chief Minister himself, have publicly congratulated "encounter specialists" and described encounter killings as effective governance. In a statement that received significant media coverage, Adityanath described his government's encounter policy as "putting criminals to sleep." The use of this language, familiar from the vocabulary of political violence worldwide, celebrates extrajudicial killing as a form of governance and explicitly removes it from the domain of accountability.

The police officers who conduct encounters are not prosecuted. They are promoted. The OMCT Global Torture Index 2025 specifically documented that police officials labeled as "encounter specialists" receive promotions for conducting extrajudicial killings, demonstrating institutional complicity. This is the clearest possible evidence that the encounter system is not a failure of accountability but a manifestation of accountability operating in reverse: instead of consequences for killing, there are rewards.

5.2 The Legal Framework: How Encounter Killings Evade the Law

The legal framework within which encounter killings are processed illustrates the architecture of impunity with particular clarity. When a person is killed in an alleged encounter, the police file a First Information Report naming the deceased as the attacker. The deceased, being dead, cannot contest this characterization. The FIR is followed by a magisterial inquiry, required under

Section 176 of the Code of Criminal Procedure for deaths in police action. In theory, this inquiry provides independent oversight. In practice, magistrates appointed by the same state government that employs the police, in a political environment that celebrates encounter killings, rarely find against the police version of events.

The NHRC has issued guidelines requiring the registration of an FIR against the police officers involved in every alleged encounter, pending investigation. These guidelines are systematically ignored. The National Crimes Records Bureau data systematically undercounts encounter killings, because many are classified as "deaths in other circumstances" rather than "encounter deaths."

The Supreme Court's direction in People's Union for Civil Liberties v. State of Maharashtra (2014), which laid down detailed guidelines for the investigation of alleged encounter deaths, including the mandatory registration of FIRs against the police, mandatory magisterial inquiry, and mandatory reporting to the NHRC, was a significant attempt to create accountability mechanisms. But compliance with these guidelines has been inconsistent and in BJP-governed states near-nonexistent. The 2025 documentation by the South Asia Justice Campaign noted that authorities have provided no official acknowledgment or investigation of recent allegations of custodial torture, staged encounters, or unlawful cremations in the context of security operations.

5.3 Encounter Killings, International Law, and the Jurisprudence of Life

The international law of the right to life is clear on extrajudicial killings. Article 6 of the ICCPR prohibits the arbitrary deprivation of life and has been interpreted by the Human Rights Committee to require that lethal force by state agents be used only when strictly necessary, proportionate to the threat, and directed at identified individuals who pose a specific, imminent threat. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the UN Congress on the Prevention of Crime and Treatment of Offenders in 1990, require that lethal force be used only as a last resort and only to protect life. Neither the ICCPR Article 6 standard nor the Basic Principles remotely authorizes the kind of preemptive encounter killings that UP police routinely conduct against individuals who are in custody or under surveillance.

The Special Rapporteur on extrajudicial, summary or arbitrary executions has, in multiple reports, expressed concern about India's encounter killing culture and specifically about the failure of the Indian state to investigate and prosecute encounter killings. The 2025 OMCT report noted that India has not ratified the Convention Against Torture and has refused access to the Special Rapporteur on Torture, whose initial visit request dates back to 1999.

The philosophical question raised by the encounter culture is one of the deepest in legal and political philosophy: what distinguishes legitimate state killing from murder? The classical Weberian answer is that the state has a monopoly on the legitimate use of force, but the concept of legitimacy is doing crucial work in that formulation. Weber's definition requires that the use of force be authorized by a legal order that is itself legitimate. A legal order that authorizes state actors to kill suspected criminals without trial, on the basis of a judicially unreviewable claim of

self-defense, is not legitimate in the Weberian sense. It is legal murder, wearing the clothes of law enforcement.

Ronald Dworkin's concept of rights as "trumps" against consequentialist arguments provides another framework. Even if one were to accept the consequentialist argument that encounter killings deter crime, this argument cannot justify the violation of the right to life of individuals who have not been convicted of any crime, because rights, in Dworkin's framework, are precisely the constraints that limit the pursuit of social goods through the violation of individual dignity. The right to life is the most fundamental right, and it cannot be traded off against even significant social gains.

CHAPTER SIX: TORTURE, THE UNCAT, AND THE JURISPRUDENCE OF BODILY INTEGRITY

6.1 The International Legal Framework Against Torture

The prohibition of torture is among the most settled norms of international law. It appears in Article 5 of the Universal Declaration of Human Rights, Article 7 of the ICCPR, and the dedicated Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), adopted by the UN General Assembly in 1984. The prohibition of torture is also recognized as a norm of customary international law, binding on all states regardless of treaty ratification, and as a peremptory norm (jus cogens), meaning that no derogation from it is permitted under any circumstances, including national emergency or security threat.

The UN Committee Against Torture, which monitors compliance with UNCAT, has developed extensive jurisprudence on what constitutes torture and what obligations states have in relation to it. The Committee has held that states must criminalize torture as a specific offense in domestic law, that the prohibition of torture applies to all persons in state custody without exception, that confessions obtained through torture must be inadmissible in all proceedings, that states must ensure that allegations of torture are promptly, impartially, and effectively investigated, that perpetrators must be prosecuted and appropriately punished, and that victims must receive appropriate reparations including adequate compensation, rehabilitation, and guarantees of non-recurrence.

India has not ratified UNCAT. This is a startling fact that deserves emphasis. India is the most populous democracy in the world, a permanent member candidate for the UN Security Council, and a country that presents itself internationally as a leader of the Global South and a champion of a multipolar international order. It has ratified the ICCPR and the ICESCR, the two main human rights covenants. But it has declined, since UNCAT was opened for signature in 1984, to ratify the Convention specifically dedicated to the prohibition of torture, a Convention to which 173 states are parties.

The refusal to ratify UNCAT is not a minor diplomatic decision. It is a statement about institutional preferences. India's refusal to ratify UNCAT ensures that the Committee Against

Torture cannot monitor India's practices, cannot receive communications from victims of torture in India, cannot conduct inquiries into systematic torture in India, and cannot request states that have extradited persons to India to provide information about non-refoulement obligations. Each of these mechanisms, unavailable because India has not ratified, would create accountability channels that India's domestic institutions systematically fail to provide.

6.2 The Scale and Systemicity of Torture in India

The Global Torture Index 2025, published by the OMCT (World Organisation Against Torture), presented a comprehensive factsheet on India that documented the scale and systemicity of custodial torture. The report's key findings are worth citing at length because they represent the most authoritative contemporary assessment of the torture situation available.

The NHRC reported approximately 2,739 custodial deaths in 2024, with approximately 2,400 in 2023. These figures represent only reported deaths in official custody and are almost certainly significant undercounts. Common torture practices documented include suspension, electric shocks, severe beatings, waterboarding, and sexual abuse. Unofficial detention locations, including private spaces used by police for interrogation, are specifically documented as sites where torture is concentrated, precisely because the informal setting reduces even the minimal documentary accountability that official detention facilities require.

The report specifically documented that police officials labeled as "encounter specialists" receive promotions for conducting extrajudicial killings, demonstrating institutional complicity that goes beyond individual misconduct to constitute a systemic institutional practice. The absence of victim and witness protection laws severely discourages reporting. And, most fundamentally, India lacks comprehensive domestic legislation explicitly criminalizing torture, with cases generally categorized as deaths in police or judicial custody, a classification that downplays the criminal character of the underlying conduct.

The lack of specific torture legislation is itself a form of structural impunity. When torture is not a specific criminal offense, its prosecution must rely on general provisions of the criminal law, primarily the IPC/BNS provisions on causing grievous hurt, culpable homicide, and wrongful confinement. These provisions, when applied to cases of police torture, face multiple obstacles: the standard of proof required for criminal conviction is high, the evidence is typically limited to the testimony of the torture survivor and the denials of police officers, the prosecution of police by police is inherently problematic, and the political pressures on prosecuting authorities to protect their colleagues are substantial.

6.3 The D.K. Basu Guidelines and Their Systematic Violation

The Supreme Court's judgment in D.K. Basu v. State of West Bengal (1996) remains the most comprehensive judicial attempt to create accountability mechanisms for custodial violence in India. The guidelines laid down in D.K. Basu require, among other things, that every arrest be accompanied by an arrest memo signed by the arrestee and countersigned by a witness; that the police officer effecting an arrest wear a tag with his or her name and designation; that the time, place of arrest, and location of custody be communicated to the family or friend of the arrestee;

that the arrestee be examined by a medical officer within 48 hours; that the arrestee be informed of the right to consult a lawyer; and that the district and state human rights commissions be informed of the arrest.

These guidelines, if followed, would create a paper trail that would significantly reduce the scope for custodial torture. But three decades after D.K. Basu, they are routinely violated. The NHRC's annual reports consistently document non-compliance. Lawyers who represent detainees in conflict zones report that their clients are regularly held in unacknowledged detention for extended periods. The lack of mandatory medical examination means that torture injuries can heal before any official record is made. The failure to notify families means that families sometimes discover detention only when they see their relative's body at the mortuary.

The systematic violation of D.K. Basu guidelines illustrates a broader truth about the relationship between judicial directions and institutional culture in India: the Supreme Court can issue directions, but it cannot change the institutional cultures and political incentive structures that determine whether those directions are followed. The judiciary can create the rules; it cannot hire the officials who apply them or control the political environment in which they operate.

6.4 The Special Case of Kashmir: Torture as Counter-Insurgency Tool

Torture in the Kashmir context has a particular character that must be analyzed separately from the general police torture problem. In Kashmir, torture has historically functioned not primarily as an interrogation technique but as a tool of collective punishment and population control, a mechanism for communicating to the civilian population that association with any form of resistance, even passive or nonviolent, will result in severe individual consequences.

The documentation of torture in Kashmir is extensive and goes back to the early years of the insurgency in the 1990s. The International Peoples' Tribunal on Human Rights and Justice in Indian-administered Kashmir has documented thousands of cases. Human rights organizations including Human Rights Watch, Amnesty International, and Physicians for Human Rights have produced detailed reports. The Kashmir-based organization Jammu Kashmir Coalition of Civil Society has maintained meticulous records.

The International Red Cross, which conducted prison visits in Jammu and Kashmir in the 1990s under a confidential procedure, reportedly raised serious concerns with the Indian government about conditions in places of detention. The government's response was to eventually suspend the ICRC's access. This suspension is itself a significant indicator: states that are confident in the legality of their detention practices do not prevent the ICRC from visiting detention facilities.

The torture documented in Kashmir includes specific methods that go beyond the general police torture repertoire: the "roller" technique of placing a heavy wooden or metal roller on the legs of detainees and rolling it, causing severe trauma; suspension by the hands or feet for extended periods; immersion of the head in water; application of electrical shocks to the genitals; and the deliberate use of the cold, wet Kashmiri winter as an instrument of torture by leaving detainees in wet clothes in unheated cells. These are not individual police excesses: they are documented patterns that suggest systematic training or practice, not spontaneous cruelty.

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CHAPTER SEVEN: CORPORATE COMPLICITY IN HUMAN RIGHTS VIOLATIONS

7.1 The Theoretical Framework: Business and Human Rights

The relationship between corporate actors and human rights violations has been a subject of sustained scholarly and policy attention since the adoption of the UN Guiding Principles on Business and Human Rights (UNGP) in 2011. The UNGPs, developed by Special Representative John Ruggie and endorsed by the UN Human Rights Council, establish a three-pillar framework: the state duty to protect human rights from corporate violations, the corporate responsibility to respect human rights, and access to remedy for victims of corporate violations.

The UNGPs represent the most authoritative contemporary framework for thinking about corporate human rights responsibility, but they are explicitly not binding: they are voluntary guidelines. The absence of binding international legal obligations on corporations for human rights violations has been criticized extensively in the human rights literature and has prompted ongoing discussions in the UN about the possibility of a binding treaty on business and human rights. India has participated in these discussions but has not been a constructive participant in the effort to strengthen binding standards.

The concept of corporate complicity in human rights violations covers a range of relationships between corporate actors and state-perpetrated violations. Direct complicity involves providing practical assistance that has a substantial effect on the commission of violations: supplying equipment used for torture, providing logistics for displacement operations, or employing security forces that commit atrocities. Indirect complicity involves benefiting from violations committed by others without direct participation: acquiring resources from communities that were violently dispossessed, profiting from the suppression of labor organizing by state security forces, or building on land cleared by illegal demolitions.

7.2 Mining, Forest Rights, and Corporate Complicity in Adivasi Dispossession

The clearest example of corporate complicity in human rights violations in India involves the relationship between resource extraction corporations and the dispossession of Adivasi communities from their ancestral lands and forests. As discussed in the earlier chapters, the Forest Rights Act of 2006 was designed to recognize and protect the traditional forest rights of Adivasi communities, including the right to continue cultivating forest land, to collect non-timber forest produce, and to protect and manage community forest resources.

But in the mineral-rich belt of central India, encompassing parts of Chhattisgarh, Jharkhand, Odisha, and Maharashtra, the state governments have systematically subverted the Forest Rights Act to clear the path for corporate mining and industrial projects. The diversion of forest land for industrial projects requires prior approval under the Forest Conservation Act, and since 2006, also requires compliance with the Forest Rights Act requirement of consent by gram sabhas (village assemblies) of affected communities. This requirement of gram sabha consent has been systematically evaded: consent has been obtained through forged records, through the staging of

assemblies that excluded affected community members, through intimidation, and through the bribery of local officials.

The corporate beneficiaries of this process include some of India's largest industrial houses. The Adani Group's coal mining operations in Chhattisgarh, the Vedanta Group's mining operations in Odisha (including the notorious Niyamgiri case, in which the Supreme Court upheld the right of the Dongria Kondh community to say no to mining through gram sabha votes, only for the state government to subsequently resume pressure on the community), and the Tata Steel and Essar Steel operations in Jharkhand have all been associated with documented violations of forest rights and Adivasi displacement.

The connection between Adivasi displacement and the Maoist conflict is direct and well-documented. Communities that have been dispossessed of their lands and livelihood, that have been subjected to violence by security forces deployed to protect corporate interests, and that have found no redress through legal mechanisms, are communities in which support for armed resistance is a predictable response. The "war on Maoism" that has been declared by the central government, with Home Minister Amit Shah's stated aim to "wipe out" Maoism by March 2026, is fought in the same territories where corporate dispossession is most concentrated. The armed forces operating in these territories operate under legal frameworks, including Chhattisgarh's CSPSA (Chhattisgarh Special Public Security Act) and section 17 powers under the UAPA, that effectively give them carte blanche to operate against civilian populations with impunity.

7.3 The Adani Connection: Crony Capitalism and Accountability Gaps

The political economy of corporate complicity in India cannot be analyzed without engaging with the question of crony capitalism and the relationship between the BJP government and specific corporate houses. The Adani Group, controlled by billionaire Gautam Adani who has documented personal ties to Prime Minister Modi going back to the Gujarat period, has emerged as the clearest example of a corporation that has benefited disproportionately from government policies and approvals while facing minimal regulatory scrutiny.

The Hindenburg Research report of January 2023 alleged massive financial manipulation by the Adani Group, including stock manipulation, inflated revenues, use of offshore shell companies, and accounting irregularities. The report triggered a significant stock market crash in Adani Group shares. The Supreme Court subsequently ordered a committee of experts to investigate the Hindenburg allegations. That committee's report, filed before the Court in 2024, was widely regarded as inadequate: it failed to fully address many of the specific allegations in the Hindenburg report, and its methodology was questioned by securities law experts.

The political dimension of the Adani case is directly relevant to human rights accountability. When a single corporate group has the political protection of the Prime Minister's office, when regulators are unwilling or unable to seriously investigate allegations of financial fraud, and when the judicial committee established to investigate those allegations produces a report that many legal experts regard as insufficient, the system of corporate accountability has failed. And when the same corporate group is expanding its footprint in port infrastructure, airport operations, energy production, defense contracts, and media ownership, the concentration of

economic power in a politically connected group has direct implications for the independence of institutions, including media institutions, that are supposed to provide accountability.

The media ownership dimension is particularly significant. The Adani Group's acquisition of NDTV, India's most prominent independent news channel, in 2022, combined with the broader pattern of corporate consolidation of Indian media ownership by groups with BJP political connections, has effectively converted much of India's mainstream media from potential accountability mechanisms into elements of the political propaganda apparatus. This media capture is analyzed in the earlier chapters on press freedom, but its corporate dimension, the specific role of politically connected corporate actors in the suppression of accountability journalism, deserves emphasis here.

7.4 The Waqf Amendment Act 2025: Corporate and Political Accumulation at Muslim Expense

The Waqf Amendment Act, passed by Parliament in 2025 and brought into force despite significant protests that resulted in at least three deaths and over 150 arrests, represents a specific instance of state legislative action that facilitates the accumulation of property rights at the expense of a religious minority community's charitable and religious endowments.

Waqf is the Islamic legal institution of charitable endowment, in which property is dedicated to religious or charitable purposes in perpetuity. Waqf properties in India include mosques, dargahs (shrines), madrasas, graveyards, rest houses, and agricultural and commercial land whose revenues support these religious and charitable purposes. Waqf is one of the most important institutions of Muslim civil society in India, supporting educational, religious, and welfare activities for the Muslim community.

The Waqf Amendment Act, as documented by Amnesty International, centralized state control over Muslim assets and endowments, fundamentally altering the governance of waqf properties in ways that reduce the autonomy of Muslim religious and charitable bodies and increase the power of state-appointed officials who, under the BJP government, are unlikely to be sympathetic to Muslim community interests. The legal changes include provisions that allow non-Muslims to be appointed to waqf boards, that alter the evidentiary standards for establishing waqf status of properties, and that give government officials greater powers over waqf property management.

Critics of the Act, including the All India Muslim Personal Law Board and numerous legal scholars, argue that it violates Articles 25 and 26 of the Indian Constitution, which guarantee the right of every religious denomination to manage its own affairs in matters of religion and to own and manage property in accordance with law. The argument is that the Act, by significantly expanding state control over waqf governance, violates the principle that the state must maintain equitable neutrality in its treatment of different religious communities' institutional affairs.

The property rights dimensions of the Waqf Amendment Act also engage with international human rights law. Article 18 of the ICCPR protects freedom of religion including the freedom to manifest religion in practice, and the Human Rights Committee has interpreted this provision to protect collective religious practices and institutions from unnecessary state interference. Article

1 of the First Optional Protocol to the ICCPR, which India has not ratified, would provide individual petition rights that could be used to challenge this kind of state interference with religious community institutions.

CHAPTER EIGHT: STATELESSNESS AS POLICY: THE NRC, DEPORTATIONS, AND THE RIGHTS OF THE EXCLUDED

8.1 The National Register of Citizens and Its Implications

The National Register of Citizens was first established for Assam under the Assam Accord of 1985, as a mechanism for identifying "illegal immigrants" from Bangladesh who had arrived in Assam after March 25, 1971. The NRC process in Assam was conducted under Supreme Court supervision between 2013 and 2019, at enormous cost and administrative effort, and culminated in the exclusion of approximately 1.9 million people from the final register published in August 2019.

The NRC process in Assam was marked by profound flaws that made its conclusions deeply unreliable. The documentation requirements for establishing citizenship were extremely stringent and difficult to meet for poor, rural, and marginalized communities who lacked formal records of birth, residence, and lineage. The documentary standards varied between verification centers, producing inconsistent outcomes. Families were split, with some members included and others excluded even when their circumstances were identical. Victims of clerical errors in government records were excluded despite being Indian citizens for generations.

Most importantly, the excluded population was not primarily Bengali-speaking Muslims, who were the implicit target of the NRC exercise as understood in the political rhetoric that drove it. According to the final data, approximately 1.2 million of the 1.9 million excluded were Hindus, many of them Bengali-Hindus whose families had been in Assam for generations. This outcome embarrassed the BJP, which had expected the NRC to produce a list dominated by Muslim "infiltrators," and led to the Home Minister demanding that the NRC process be repeated with stricter standards.

The logical next steps, a nationwide NRC combined with the CAA as discussed in earlier chapters, would create a system in which Muslim individuals excluded from a nationwide NRC would have no legal pathway to regularize their status, while members of other religious communities in similar situations could access the CAA accelerated citizenship pathway.

The HRW World Report 2026 documented that Indian authorities expelled hundreds of Bengali-speaking Muslims from BJP-governed states to Bangladesh in 2025 without due process, claiming they were "illegal immigrants," with some Indian citizens among those expelled. This deportation drive, which occurred without individual verification of citizenship status, without legal proceedings, without judicial oversight, and with documented cases of actual Indian citizens being included among those deported, represents the unilateral enforcement of a

statelessness condition that the legal framework has not yet formally created but that the state is implementing operationally without waiting for the legal framework to catch up.

The deportation of Indian citizens to Bangladesh as alleged illegal immigrants is not merely an administrative irregularity. It is a violation of the constitutional right of every citizen to reside and settle anywhere in India under Article 19(1)(e) and of the fundamental principle that citizens cannot be deported. It also engages Bangladesh's right not to receive persons who are not its nationals without consent, and the international law principle of non-refoulement, which prohibits the return of any person to a territory where they face persecution.

8.2 The Rohingya: Statelessness and Refoulement

The situation of Rohingya Muslim refugees in India is among the most acute examples of the intersection between statelessness, refoulement, and systematic rights violation. The Rohingya are a Muslim minority from Myanmar who have faced decades of systematic persecution, culminating in the 2017 military campaign that the UN Fact-Finding Mission characterized as genocidal in intent and execution. Approximately 40,000 Rohingya have sought refuge in India, living primarily in Jammu and Kashmir, Hyderabad, and other cities.

India has not signed the 1951 Refugee Convention or its 1967 Protocol, meaning that it has no formal legal obligations under international refugee law. But India is bound by the principle of non-refoulement as a norm of customary international law and through its obligations under Article 7 of the ICCPR, which prohibits return to a country where there is a real risk of persecution, torture, or serious harm.

Despite this, Indian authorities have periodically deported Rohingya to Myanmar, even during periods when the risk of persecution was at its most intense. The HRW World Report 2025 documented that Rohingya Muslim refugees in India faced tightened restrictions, arbitrary detention, violent attacks often incited by political leaders, and a heightened risk of forced returns. The HRW report also noted that the UN Committee on the Elimination of Racial Discrimination called on the government in 2024 to end the arbitrary detention of Rohingya.

The treatment of Rohingya in India reflects a broader hostility to Muslim migrants and refugees that is ideologically consistent with the BJP's Hindutva framework. The Prime Minister has referred to Rohingya as "infiltrators," and the Home Minister has described them as a threat to national security. In this political environment, the application of non-refoulement principles and the prohibition of arbitrary detention to Rohingya is entirely dependent on judicial intervention, and the judiciary's willingness to provide that intervention has been inconsistent.

8.3 Statelessness Theory and the Human Rights of the Stateless

The philosophical and legal question of statelessness has been one of the most profound in twentieth and twenty-first century thought about rights. Hannah Arendt, writing in The Origins of Totalitarianism (1951) about the stateless persons created by the catastrophes of the early twentieth century, identified what she called the "right to have rights": the right to belong to a political community within which other rights can be recognized and protected. Arendt's analysis

was devastating in its clarity: the person who is stateless, who belongs to no recognized political community, has no rights in any practical sense, because rights are enforced through legal systems and legal systems are organized by states that only protect those who are recognized as belonging to them.

Arendt's analysis has profound implications for India's NRC project. The creation of a category of persons who live in India, who may have lived in India for generations, but who cannot prove their citizenship through documentary evidence acceptable to the NRC, is the creation of a stateless population within a state that formally denies their statelessness: they are not acknowledged as citizens but they have not been formally declared to be non-citizens either. They are what Matthew Price, developing Arendt's analysis, calls "juridical ghosts": persons present in a territorial space but absent from the legal system that organizes that space.

The juridical ghost status is not merely a doctrinal inconvenience. It is a profound violation of the most basic condition of political existence. Persons who cannot prove their citizenship cannot access government services, cannot travel freely, cannot obtain government employment, cannot vote, cannot marry through registered channels, and cannot be protected by the legal system against private violence, because they cannot effectively invoke their legal rights. The creation of this status, even as a de facto condition rather than a formal legal status, is a direct attack on the rights guaranteed by the Indian Constitution to "every person" or "every citizen" depending on the specific right.

CHAPTER NINE: THE LEGAL PROFESSION UNDER SIEGE: LAWYERS, BAR ASSOCIATIONS, AND THE CRISIS OF ADVOCACY

9.1 The Role of Lawyers in the Accountability System

Any serious analysis of the architecture of impunity must examine the role of the legal profession, because lawyers are the primary institutional mechanism through which victims of human rights violations access the legal system. A lawyer who represents a torture victim before a human rights commission, who files a writ petition challenging an illegal detention, who defends an accused person against fabricated UAPA charges, who appears before the Supreme Court challenging a bulldozer demolition, is performing an essential accountability function. The capacity of the legal profession to perform this function is directly affected by the political environment, the professional culture, and the institutional framework within which lawyers operate.

The crisis of the legal profession in India as an accountability mechanism has multiple dimensions. The most immediate is the pattern of targeted persecution of lawyers who take on sensitive human rights cases. The persecution of human rights lawyers is documented systematically in the Bhima Koregaon case, in which several of the accused are themselves lawyers who had represented marginalized clients, including Adivasi communities and Dalit activists, in conflict zones and atrocity cases. Sudha Bharadwaj, one of the Bhima Koregaon accused, spent years working as a labor lawyer in Chhattisgarh representing workers in the

mining sector and Adivasi communities facing displacement. Her prosecution under the UAPA is widely understood as a direct response to her professional advocacy work, a message to lawyers who work with politically sensitive clients that they too are targets.

The HRW recommendations to the EU in May 2025 specifically documented that federal law enforcement agencies such as the Enforcement Directorate and Central Bureau of Investigation are used by Indian authorities to target human rights defenders, opposition leaders, independent media, and other critics with politically motivated allegations. Lawyers who represent politically sensitive clients are not immune from this targeting.

9.2 Bar Councils, Professional Independence, and the Majoritarian Turn

The professional independence of the legal profession in India is formally protected by the Advocates Act of 1961, which established the Bar Council of India and state bar councils as statutory self-regulatory bodies for the profession. The BCI and state bar councils set standards for legal education, regulate admission to the bar, and exercise disciplinary jurisdiction over advocates.

In practice, the bar councils have increasingly become arenas in which the Hindu nationalist political project is contested and often advanced. Multiple state bar associations, including in Uttar Pradesh, Madhya Pradesh, and other BJP-governed states, have passed resolutions refusing to represent accused persons in communal violence cases where the accused are Muslim, or explicitly calling on advocates not to represent individuals accused of cow slaughter or other offenses associated with the cow protection movement. These resolutions directly violate the fundamental professional obligation of advocates to represent clients without discrimination, which is explicitly stated in the Advocates Act's rules on professional conduct.

The Bar Council of India has taken no effective action against bar associations that have passed such discriminatory resolutions. Its silence constitutes tacit endorsement. And when the professional regulatory body endorses the principle that certain categories of person are not entitled to legal representation, it is endorsing the dismantling of one of the most fundamental protections of the rule of law: the right of every accused person to legal counsel.

9.3 The SLAPP Problem: Strategic Litigation Against Public Participation

Strategic litigation against public participation (SLAPP) refers to the use of litigation as a tool of harassment and intimidation rather than genuine legal redress. In India, SLAPP suits against journalists, activists, and lawyers have become an important component of the impunity architecture. Under the UAPA, defamation law, sedition provisions, and IT Act Section 66A-equivalent provisions, individuals who document violations or advocate for victims can be subjected to prolonged and expensive criminal proceedings that are designed not to secure conviction but to consume the target's time, resources, and attention.

The comedian Kunal Kamra case of 2025, in which Maharashtra state police filed an FIR against him for a parody in his stand-up show that referred to the administration, illustrates the SLAPP dynamic at the celebrity level. But the same dynamic operates at every level of civil society: a

Dalit activist who documents atrocities finds herself the subject of a defamation complaint from the perpetrators; a lawyer who files a PIL challenging AFSPA killings in Kashmir finds himself investigated by the Enforcement Directorate for alleged financial irregularities; a journalist who reports on the Bhima Koregaon evidence planting finds her press accreditation cancelled.

The cumulative effect of this SLAPP culture is to make advocacy on human rights issues extraordinarily costly and risky, effectively restricting it to those who have sufficient resources, courage, and social support to sustain prolonged harassment. This filters out precisely the most vulnerable voices, those with the least resources and the most exposure, while allowing those with institutional backing and organizational support to continue. The practical effect is a narrowing of the civic space in which human rights advocacy can occur.

CHAPTER TEN: THE WAQF ACT, RELIGIOUS PROPERTY RIGHTS, AND THE JURISPRUDENCE OF SECULAR GOVERNANCE

10.1 Secularism in the Indian Constitutional Framework

The concept of secularism in the Indian constitutional framework has a history and meaning that differs significantly from Western liberal secularism. The Indian variety, sometimes called "sarva dharma sambhav" (equal respect for all religions), does not require the strict separation of state and religion that characterizes French laicite or the American establishment clause jurisprudence. Instead, it requires that the state maintain equitable treatment of all religions, not favoring or disfavoring any particular community. The Indian state actively engages with religious affairs, including managing temple trusts, regulating waqf, and maintaining special laws for personal matters (marriage, inheritance, guardianship) that differ by religious community.

This model of engaged but equitable religious governance creates particular challenges for accountability. When the state manages Hindu temple trusts differently from how it manages waqf properties, when it enacts special laws for Muslim personal matters (Muslim Personal Law) but simultaneously allows Hindu nationalist organizations to campaign against those laws, when it provides state funding for Hindu pilgrimage (including the Amarnath Yatra subsidy) but not for Haj (after the Modi government discontinued the Haj subsidy), the principle of religious equity is violated.

The jurisprudence on secularism developed by the Supreme Court in a series of landmark decisions, including S.R. Bommai v. Union of India (1994), which treated secularism as part of the basic structure of the Constitution, protects against the most egregious forms of state favoritism toward or against particular religions. But the Court's interpretation of secularism has been increasingly strained by the BJP government's legislative program.

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10.2 The Waqf Amendment Act in Jurisprudential Perspective

The Waqf Amendment Act of 2025 can be analyzed from several jurisprudential angles simultaneously, each of which illuminates a different aspect of its legal character.

From the perspective of religious freedom jurisprudence, the most relevant provision is Article 26 of the Indian Constitution, which guarantees every religious denomination the right to manage its own affairs in matters of religion and to own and manage property in accordance with law. The Supreme Court's jurisprudence on Article 26 has held that this guarantee protects the internal governance of religious institutions from excessive state interference. The degree to which the Waqf Amendment Act's expansion of state control over waqf governance crosses this line is a question that the Supreme Court will ultimately have to determine.

From the perspective of comparative religious institutions law, the question is whether the state treats Muslim religious endowments equitably in comparison with Hindu temple endowments. Hindu temple endowments are governed by state legislation, including the Madras Hindu Religious and Charitable Endowments Act, which similarly provides for state oversight of temple management. But critics of the Waqf Amendment Act argue that the specific changes introduced, including the provision for non-Muslim members of waqf boards, the evidentiary changes regarding waqf property status, and the expansion of government official powers, represent a more intensive form of state control than that applied to Hindu religious endowments.

From the perspective of international human rights law, the Framework Convention on the Protection of National Minorities and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, while India is not a party to the former and the latter is not binding, represent international consensus standards that are relevant to the interpretation of India's obligations under the ICCPR. Both instruments protect the right of minority religious communities to establish and maintain their own religious institutions, and the imposition of state control over those institutions that exceeds what is proportionate and non-discriminatory may violate the principle of non-discrimination in Article 26 of the ICCPR.

CHAPTER ELEVEN: THE PAHALGAM ATTACK AND ITS AFTERMATH: EMERGENCY IMPUNITY AND THE WEAPONIZATION OF TERROR

11.1 The Pahalgam Attack and Its Legal Aftermath

In April 2025, armed men opened fire in the town of Pahalgam, a popular tourist destination in Kashmir, killing 26 people, mostly tourists. The attack was the worst terrorist incident in Kashmir in many years. The Indian government attributed the attack to Pakistan-based militant organizations, an attribution that Pakistan disputed. What followed the attack has direct and important implications for the human rights situation in both India and the region.

As documented by Amnesty International and Human Rights Watch in their 2025-2026 reports, Indian authorities used the Pahalgam attack as the occasion for a dramatic expansion of

repression in Kashmir and across India more broadly. Sedition laws and the UAPA were used to arrest or file FIRs against journalists, academics, and students who demanded accountability for the security lapse that had allowed the attack to occur. The framing of accountability demands as "anti-national" is a consistent feature of the Indian state's response to criticism in the aftermath of security failures.

Following the attack, Indian authorities blocked the social media accounts and websites of several news organizations, ordered X (formerly Twitter) to block over 8,000 accounts without providing evidence or justification, and suspended mobile internet services across Kashmir. The UN Special Rapporteurs expressed alarm about these measures, noting that Indian authorities had suspended mobile internet services and blocked social media accounts including those of journalists and independent media outlets.

India's military launched Operation Sindoor against what it described as terrorist infrastructure in Pakistan and Pakistan-administered Kashmir. The cross-border strike resulted in civilian casualties in Pakistan, with at least 16 civilians killed in cross-border firing according to Amnesty International. The operation raised questions under international humanitarian law about proportionality and distinction, the requirement to distinguish between military targets and civilian objects, that have not been systematically addressed by the Indian government.

11.2 Emergency Logic and the Permanent State of Exception

The Pahalgam attack and its aftermath illustrate what the philosopher Giorgio Agamben, drawing on Carl Schmitt, has analyzed as the "state of exception": the suspension of ordinary legal order in the name of emergency that becomes a permanent governing technique rather than a temporary measure. Agamben argues that the state of exception, far from being external to the legal order, has become the dominant paradigm of governance in contemporary states, a space in which normal legal constraints are suspended while the state retains the formal apparatus of legality.

In India, the state of exception is not a single emergency declaration but a permanent condition in multiple domains simultaneously. Kashmir has been in a state of exception since the insurgency began in 1989, and the revocation of Article 370 in 2019 deepened rather than resolved that condition. The "disturbed areas" designated under AFSPA are permanent zones of exception where military power operates outside ordinary legal constraints. The UAPA creates a legal exception to normal evidentiary and bail standards for persons labeled as terrorists or Maoist supporters. The internet shutdowns create temporary but recurring exceptions to the normal information environment.

The logic of the state of exception, as Agamben analyzes it, is self-reinforcing: each exercise of emergency power creates the conditions for its own continuation, because the suspension of ordinary rights prevents the political organization that could challenge the emergency, and the security outcomes of emergency governance are attributed to the emergency measures themselves rather than to other factors, creating the appearance of necessity.

Applied to India, this analysis suggests that the impunity architecture is not merely a set of specific institutional failures that could be corrected through targeted reforms. It is a systemic political technology, a set of interlocking mechanisms that together create a governance mode in which constitutional rights are maintained as formal aspirations while the practical organization of power proceeds through exception and impunity.

11.3 Anti-National Rhetoric and the Criminalization of Accountability Demands

The pattern of using the language of "anti-national" to delegitimize demands for accountability deserves particular analysis, because it represents one of the most effective ideological mechanisms for maintaining impunity. The claim that accountability demands are "anti-national" does two things simultaneously: it attributes a seditious political motivation to what would otherwise be recognized as the ordinary exercise of constitutional rights, and it elevates the interests of the state (defined as coterminous with the interests of the nation, and further defined as coterminous with the interests of the ruling government) above the rights of individuals.

In the weeks following the Pahalgam attack, Assam's BJP chief minister described the arrest of 97 people, mostly Muslim, for their social media comments as taking action against "anti-national and anti-Hindu culprits." The conflation of "anti-national" and "anti-Hindu" in this formulation is precisely the Hindutva ideological move: it equates the nation with Hindu identity and treats any criticism or questioning as simultaneously an attack on the state and an attack on Hinduism. This equation is constitutionally indefensible (the Constitution defines India as a secular state that belongs equally to all its citizens) but politically powerful.

The Supreme Court's grant of protection in August 2025 to the editors and journalists of the online news website The Wire from arrest after authorities in Assam filed sedition charges, and its bail grant in May 2025 to prominent Muslim academic Ali Khan Mahmudabad arrested for a social media post after the Kashmir attack, represents the judiciary's sporadic resistance to the most egregious exercises of this suppression power. But the reliance on individual judicial interventions, each requiring a separate petition, a separate legal battle, and the exhaustion of time and resources by the accused, as the primary protection against politically motivated prosecution is itself a symptom of the accountability deficit.

CHAPTER TWELVE: POLICE REFORM, ACCOUNTABILITY GAPS, AND THE POLITICAL ECONOMY OF LAW ENFORCEMENT

12.1 The Political Impossibility of Police Reform

Police reform is perhaps the most frequently recommended and least achieved of all Indian governance reforms. The National Police Commission, established in 1977, produced eight comprehensive reports between 1979 and 1981 that laid out in meticulous detail the reforms required to transform India's colonial-era police into a service oriented toward the protection of citizens rather than the maintenance of state power. The reports recommended changes to the

Police Acts, to the appointment and transfer of police officials, to the establishment of independent accountability mechanisms, and to the culture and training of the police.

Almost none of these recommendations have been implemented. The Supreme Court's judgment in Prakash Singh v. Union of India (2006) directed all state governments and the central government to implement seven specific reform measures, including the establishment of State Security Commissions to insulate police from political interference, the separation of investigation from law and order functions, the establishment of Police Complaints Authorities to receive complaints against police, and tenure protection for senior police officers. This judgment was issued by the highest court in the land and imposed specific, concrete, implementable directions.

Twenty years later, compliance remains deeply inadequate in virtually every state. The pattern of non-compliance is not the result of technical difficulty or resource constraints: it is the result of deliberate political choice. Politicians in power benefit from the ability to direct police against political opponents, from the ability to protect allied criminals from police action, from the ability to use police to suppress protests and dissent, and from the culture of police impunity that ensures that officers who act on political direction face no professional consequences. All of these benefits of the current dysfunctional system would be eliminated by genuine police reform, which is precisely why genuine police reform does not occur.

12.2 The BSF and Border Violence: Accountability Beyond Borders

The Border Security Force, India's primary border guarding force, has been the subject of persistent and serious human rights allegations related to its conduct at India's borders, particularly the India-Bangladesh border. The OMCT Global Torture Index 2025 specifically documented that people near the Indo-Bangladesh border, face routine violence, torture, and extrajudicial killings by state forces, noting that legal impunity granted to the BSF severely hinders accountability and justice for victims.

The HRW World Report 2026 documented that according to reports, India's BSF allegedly killed at least 10 Bangladeshis at the India-Bangladesh border in the first four months of 2025. The historical pattern is even more stark: the BSF has killed hundreds of Bangladeshis over the years, in circumstances that have been documented by the Bangladeshi human rights organization Odhikar as overwhelmingly involving unarmed civilians engaged in cross-border trade or migration rather than armed threats requiring lethal force.

The BSF's legal framework, like AFSPA, provides its members with protection from prosecution in civilian courts. BSF personnel are subject to the BSF Act and can be tried by BSF courts, but these internal disciplinary processes are not independent, not transparent, and have not produced any significant accountability for border killings. The Bangladesh government has repeatedly raised the issue of BSF killings with India through diplomatic channels, with minimal effect.

The international law framework applicable to BSF border killings is clear. The use of lethal force at a border must comply with the same standards of necessity and proportionality that apply to law enforcement generally. The UN Basic Principles on the Use of Force and Firearms

by Law Enforcement Officials require that lethal force be used only to protect life when there is imminent threat. The killing of unarmed cattle traders or economic migrants who pose no threat to life cannot meet this standard. Under international human rights law, each killing constitutes a potential violation of Article 6 of the ICCPR, creating an obligation on the Indian state to investigate, and if the investigation reveals unlawful killing, to prosecute and punish.

12.3 The New Criminal Laws and the Accountability Gap

The introduction of three new criminal laws in 2023 and 2024, replacing the Indian Penal Code with the Bharatiya Nyaya Sanhita, the Code of Criminal Procedure with the Bharatiya Nagarik Suraksha Sanhita, and the Indian Evidence Act with the Bharatiya Sakshya Adhiniyam, was presented by the government as a historic decolonization of the criminal justice system. The new laws replaced the colonial names, transferred to Hindi terminology, and restructured the codification in various ways.

But the substance of the accountability gaps remained largely intact. The new BNSS maintains and in some respects expands police powers of detention, including the power to hold persons in police custody for up to fifteen days in initial custody (expanded from the previous provisions), and the power to hold persons suspected of offenses punishable by imprisonment for seven years or more for up to ninety days without charge. These extended detention periods, without correspondingly strengthened judicial oversight or expanded legal aid provisions, increase rather than decrease the risk of custodial torture.

The new laws have also been criticized for maintaining and strengthening provisions that enable the criminalization of dissent. The BNS offense of "acts endangering sovereignty, integrity, and unity" (Section 152) replicates the essential character of the old sedition provision while avoiding the "sedition" label that the Supreme Court had temporarily stayed in 2022. The BNS also expands the scope of organized crime provisions and introduces new offenses related to "terrorist acts" that overlap with UAPA provisions, creating multiple overlapping frameworks within which dissent and activism can be criminalized.

The bail reform crisis, which several chapters of the earlier parts have addressed in detail, is directly connected to the new criminal laws' treatment of bail. The 2026 landscape shows that hundreds of persons remain in pre-trial detention under the UAPA and other provisions, many for periods exceeding the maximum sentence they could receive if convicted. This is not merely a procedural irregularity: it is substantive punishment imposed without conviction, and it is a systematic feature of the accountability architecture that has not been addressed by the new criminal laws.

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CHAPTER THIRTEEN: PHILOSOPHICAL SYNTHESIS: THE SYSTEM OF NORMALIZED VIOLATION

13.1 Normalization and Its Theoretical Foundations

The concept of normalization, as applied to systematic violations, refers to the process by which practices that would otherwise be recognized as extraordinary and unacceptable become ordinary and unremarkable through their repeated occurrence and the institutional and cultural accommodations that attend them. The political theorist Chantal Mouffe, drawing on Gramsci's concept of hegemony, analyzes normalization as the process through which a particular power configuration establishes itself as the common sense of a society, the background assumption within which political debate occurs and against which alternative possibilities appear radical or unrealistic.

The South Asia Justice Campaign's 2026 Annual Report, documenting the human rights situation in India in 2025, explicitly used the language of normalization: "As India enters 2026, its persecution of religious minorities shocks as much by its routinisation as by its scale and cruelty, having become, as observers have been warning, a dangerous new normal." The concept of a "dangerous new normal" is precisely the normalization dynamic that political theorists have analyzed.

The process of normalization in India has operated through several distinct mechanisms. The first is temporal normalization: violations that would have been regarded as exceptional when they first occurred have been absorbed into the ordinary political landscape through their repetition. The first mob lynching of a Muslim man for alleged beef possession generated significant national controversy. The hundredth generated barely a mention in mainstream media. The first bulldozer demolition of a Muslim-owned property was widely condemned. By 2025, "bulldozer" had become a BJP electoral symbol celebrated at political rallies. The normalization works through the sheer volume of occurrences: there is not enough public attention, judicial capacity, or civil society energy to respond to each one as the exceptional event it should be.

The second mechanism is institutional normalization: institutions that should respond to violations as exceptions have reorganized their functions around violations as ordinary cases. The NHRC, which should treat every custodial death as an emergency requiring immediate investigation, processes them as routine case files. State human rights commissions, which should treat communal violence allegations as urgent priorities, assign them normal docket positions that result in delays of years. Police complaint authorities, where they exist at all, process complaints against officers at a pace that ensures most complainants give up before reaching any resolution.

The third mechanism is cognitive normalization: through the media capture discussed in earlier chapters, through the narrative frameworks promoted by government spokespersons, and through the broader ideological environment created by Hindu nationalist cultural politics, the violations are rendered cognizable to large sections of the population not as violations but as necessary, appropriate, or even desirable. The encounter killing of an alleged criminal becomes "justice."

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The demolition of a Muslim's home becomes "action against illegal construction." The detention of a human rights activist under UAPA becomes "neutralizing a Maoist sympathizer."

13.2 The Philosopher's Response: What Resistance to Normalization Requires

The normalization dynamic raises a fundamental philosophical question: what is required to maintain the moral and political perception that normalized violations are, in fact, violations? What prevents the slide from awareness of wrongdoing to accommodation and ultimately to endorsement?

This question is addressed in the philosophical literature on moral psychology, particularly in the work of Claudia Card, whose concept of "atrocity" in The Atrocity Paradigm (2002) specifically addresses the question of how serious wrongdoing is maintained in moral consciousness rather than accommodated through normalization. Card argues that the recognition of atrocity requires the maintenance of connection to the experience of victims: it is the specific, concrete suffering of identifiable individuals that resists the abstracting and normalizing tendency of institutional and ideological discourse.

Upendra Baxi's insistence on "suffering" as the starting point of human rights analysis, discussed in the introductory chapters of Part One, makes the same point from within the human rights scholarly tradition. The textbook before you is itself an attempt to honor this imperative: by naming specific cases, specific persons, specific atrocities, specific legislative provisions, and specific institutional failures, to resist the abstracting tendency that converts 2,739 custodial deaths into a NHRC statistical table rather than 2,739 specific, irreplaceable human beings subjected to specific physical violence in specific cells by specific officers who have specific names and specific superiors and specific career trajectories.

The resistance to normalization is not merely an academic or moral project. It has direct legal and political consequences. The documentation that maintains the visibility of violations is the documentation that enables future accountability: truth commissions depend on it, prosecutors use it, reparations programs require it, and political reform movements are organized around it. The human rights defenders who maintain this documentation under conditions of extreme personal risk, the Kashmiri journalist who reports despite the PSA, the Adivasi activist who documents forest rights violations despite the UAPA threat, the Dalit lawyer who files PILs on behalf of atrocity survivors despite caste hostility, are performing an indispensable service to the possibility of accountability.

13.3 The Theories of Structural Evil and Their Application to India

The philosophical literature on structural evil provides a framework for understanding how large-scale human rights violations can persist without requiring that the majority of participants in the system be individually evil or even personally indifferent to suffering. Hannah Arendt's concept of the "banality of evil," developed in Eichmann in Jerusalem (1963), analyzed how ordinary bureaucratic processes can be organized to produce genocidal outcomes without requiring that individual participants consciously choose evil over good. Arendt's analysis has been extensively

applied and extended, including in Iris Marion Young's work on the social connection model of responsibility.

Young, in Responsibility for Justice (2011), argues that persons who participate in structural processes that produce injustice bear a "political responsibility" to work to change those structures, even when they have not individually acted wrongly and even when they bear no personal causal responsibility for specific outcomes. This concept of political responsibility is directly relevant to the analysis of impunity in India: the large number of persons who participate in the institutional structures that produce impunity, including judges who deny bail in UAPA cases, police officers who fail to register FIRs for atrocities, bureaucrats who facilitate illegal demolitions, journalists who ignore or minimize violations, and voters who support governments that commit or enable them, all bear this kind of political responsibility even when none of them individually would characterize their actions as support for human rights violations.

Young's framework suggests that accountability for structural violations must extend beyond individual perpetrators to the structural participants who make the system possible. This does not mean criminal prosecution of everyone involved in a dysfunctional system: criminal accountability is appropriately reserved for those who make specific choices to commit or directly enable violations. But it does mean that reform requires addressing the structural conditions, the institutional designs, the political incentives, the professional cultures, and the ideological frameworks, that enable the participation of ordinary actors in a system that produces extraordinary harm.

13.4 Democratic Theory and the Majoritarian Threat to Rights

The relationship between majority democracy and minority rights is one of the central tensions in liberal democratic theory. The Madisonian concern about majority tyranny, which shaped the design of the United States Constitution and its bill of rights, is directly relevant to India in the current moment. James Madison's argument in Federalist No. 51 that the rights of minorities must be protected from majority faction through constitutional design and institutional structure anticipated precisely the situation that India faces today: a democratic majority that uses its electoral strength to systematically disadvantage a religious minority.

The Madisonian response was constitutional: rights provisions, countermajoritarian institutions (courts, second chambers), and structural separation of powers that prevent any single political actor from accumulating sufficient power to dominate others. India's Constitution incorporates all of these Madisonian elements, in their formal design. But the substance of their protective function has been progressively eroded.

The theoretical framework of "tyranny of the majority" has been updated and refined for the contemporary context of electoral democracies by scholars including Fareed Zakaria (illiberal democracy), Steven Levitsky and Daniel Ziblatt (how democracies die), and Yascha Mounk (the people versus democracy). These scholars have analyzed how elected governments can systematically dismantle the institutions of liberal democracy while maintaining the formal apparatus of electoral competition: the rigging of the playing field rather than the abolition of the game.

In India, the pattern fits: elections are held, votes are counted (though with growing questions about the independence of the Election Commission), and the BJP wins enough of them to govern. But the playing field is systematically tilted through the capture of regulatory institutions, the concentration of media ownership in friendly hands, the use of state investigative agencies against opposition, and the mobilization of communal sentiment through the strategic deployment of violence and its political normalization. The result is a system that is formally democratic but substantively authoritarian in its treatment of minorities, dissenters, and the politically marginal.

13.5 The Crisis of Rule of Law in Comparative Perspective

The Rule of Law Index published by the World Justice Project tracks the rule of law across more than 140 countries across eight dimensions: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. India's ranking has declined across multiple dimensions in recent years, reflecting the documented failures of accountability that this textbook has traced.

In the 2025 World Justice Project Rule of Law Index, India ranked 79th out of 142 countries overall. In the fundamental rights category, India ranked 98th. In civil justice, India ranked 93rd. These rankings place India well below the level that its formal constitutional commitments would suggest and below many countries with less elaborate rights frameworks.

The rule of law crisis in India is not merely an administrative or governance failure. It is a constitutional crisis of the first order: a system in which the supreme law of the land, the Constitution, is repeatedly violated by the government that is constitutionally obligated to uphold it, while the institution charged with enforcing constitutional supremacy, the Supreme Court, is increasingly unwilling to exercise that function against the executive.

The jurisprudential concept of constitutional rot, developed in the American constitutional literature by Jack Balkin in his 2020 book Constitutional Rot, describes the process through which constitutional norms erode not through formal amendment but through the gradual desuetude of practices, norms, and institutions that give the constitutional text its practical meaning. Constitutional rot does not require that the constitution be repealed or formally suspended: it requires only that the institutions that were supposed to give it effect stop doing so, that the political actors who were supposed to be constrained by it act as if they are not, and that the population that was supposed to be protected by it lose faith in its protection. India is deep in the process of constitutional rot.

CONCLUDING COMMENTARY: PART TEN AND THE BROADER ARGUMENT

The ten chapters of Part Ten have traced the architecture of impunity in India from its philosophical foundations through its institutional manifestations and toward a synthetic theoretical account of what it represents. The argument that this part has developed can be summarized as follows.

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Impunity in India is not a failure of the legal system. It is the product of a deliberately designed institutional architecture in which the mechanisms of accountability have been captured, weakened, or intimidated by the political forces that benefit from impunity. This architecture operates through: the denial of independent human rights oversight (the NHRC's compromised independence); the conversion of inquiry commissions into truth-avoidance mechanisms; the celebration rather than prosecution of extrajudicial violence (the encounter culture); the absence of specific anti-torture legislation and refusal to ratify UNCAT; the corporate capture of regulatory processes that enables complicity in Adivasi dispossession; the weaponization of citizenship law to create de facto statelessness for Muslim minorities; the persecution of the lawyers and human rights defenders who would otherwise sustain accountability demands; the manipulation of emergency and security discourse to normalize suppression; and the political economy of majoritarian democracy in which the costs of violations fall on the most politically marginal and the benefits of impunity accrue to the most politically powerful.

This architecture did not emerge overnight. It has been built over decades, through the accumulation of colonial institutional inheritances, the choices of successive Indian governments, and the progressive capture of accountability institutions by political actors whose interests are served by their dysfunction. What has changed under the BJP government since 2014 is the ideological coherence and the deliberateness with which this architecture has been maintained and extended: violations that were previously somewhat shameful, even for their perpetrators, are now celebrated; impunity that was previously a quiet institutional achievement is now a public political value.

The academic literature published in 2024, 2025, and 2026 converges on this analysis. The HRW World Report 2026 describes India's slide to authoritarianism as continuing. Amnesty International's 2026 State of the World's Human Rights presents a stark picture of a country where institutional safeguards have weakened significantly and where the space for dissent has narrowed sharply. The GANHRI's downgrading recommendation represents an international institutional verdict on the failure of India's own human rights machinery. The Global Torture Index 2025 documents the scale and systemicity of custodial violence. And the South Asia Justice Campaign's 2025 Annual Report speaks of a "dangerous new normal" in which the persecution of minorities has become "an accepted, if not rewarded, feature of governance."

Part Eleven will examine the theoretical possibilities of reform: what mechanisms of accountability, internal and external, domestic and international, could interrupt the architecture of impunity, and what conditions are necessary for those mechanisms to operate. It will engage with the literature on democratic resilience, constitutional recovery, and the role of civil society in sustaining the conditions for future accountability. It will examine what other countries have done and what India could do.

But the starting point for any serious engagement with reform must be the unflinching recognition of the depth and breadth of the problem that this part has mapped. Impunity in India is not a technical problem requiring technical solutions. It is a political problem requiring political change, and political change requires, as its foundation, the kind of analytical clarity and moral seriousness that this textbook has attempted to model throughout its ten parts.

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PART ELEVEN: THE ARCHITECTURE OF REFORM: ACCOUNTABILITY MECHANISMS, DEMOCRATIC RESILIENCE, AND THE PATHWAYS TOWARD JUSTICE

PREFACE TO PART ELEVEN

The preceding ten parts of this textbook have accomplished a systematic, philosophically grounded, and empirically documented mapping of the architecture of oppression that operates within and through the Indian state. That architecture has been examined from its foundational philosophical premises in natural law, legal positivism, Rawlsian justice, postcolonial jurisprudence, and feminist theory through its concrete institutional expressions in the UAPA, AFSPA, the NRC, the CAA, bulldozer demolitions, encounter killings, custodial torture, the strangulation of civil society through the FCRA, and the systematic marginalization of Dalits, Muslims, Adivasis, women, Kashmiris, and the people of the northeast. The architecture of impunity has been examined through its political economy, its normalization dynamics, its corporate entanglements, and its philosophical underpinnings in the work of Agamben, Arendt, Young, Card, and Baxi.

What remains is the most difficult question of all. Not the descriptive question of what is happening, but the normative and practical question of what might be done. Not merely the documentation of wrong but the theorization of repair. Not only the anatomy of violation but the possibility of accountability. Not just the critique of the present but the imagination of a different future.

This is not a naive question. The preceding parts have established that the architecture of impunity in India is deeply embedded, multiply reinforced, historically rooted, and currently being deepened rather than dismantled. The political forces in control of the central government have demonstrated no interest in reforming the systems that serve their purposes. The institutions that might resist executive overreach, the Supreme Court, the National Human Rights Commission, the Election Commission, the Central Bureau of Investigation, have been progressively weakened, captured, or intimidated. Civil society organizations that provide the social infrastructure of accountability have been systematically targeted through the FCRA, the UAPA, and other instruments of suppression. The media landscape has been captured by politically aligned corporate interests. And the 2026 period shows no sign of reversal in any of these trends.

And yet the question of reform is not merely an academic indulgence. It is demanded by the suffering of the millions of people whose lives, liberties, and dignities are being violated every day. It is demanded by the tradition of intellectual seriousness within which this textbook operates: a tradition that does not accept the permanence of injustice as a political fact, however deeply it may be embedded. It is demanded by the history of change in places that seemed even more hopeless: South Africa, where the apartheid regime seemed impregnable until it was not;

Chile, where Pinochet seemed permanent until he lost a plebiscite; South Korea, where military dictatorship gave way to democracy; Argentina, where the generals who had disappeared tens of thousands of people eventually faced criminal accountability.

Part Eleven is organized around twelve chapters that examine the theoretical possibilities of reform from multiple angles simultaneously. The analysis proceeds through the specific mechanisms and institutions through which reform could operate: the judiciary, the electoral system, civil society, international human rights institutions, comparative constitutional experience, transitional justice theory, economic structures, media systems, constitutional provisions, criminal justice, and police accountability. It concludes with a philosophical synthesis that attempts to situate the question of reform within the broadest intellectual frameworks available.

Throughout, the analysis insists on honesty about limits. Reform in a state that is actively democratic, however imperfectly, requires different strategies than reform in a state that is straightforwardly authoritarian. The fact that India holds elections, that courts sometimes protect rights, that civil society survives in diminished form, that oppositional political parties continue to function and win state-level power, creates both opportunities and illusions. The opportunities are real: they are the cracks in the architecture of impunity through which accountability can sometimes be forced. The illusions are also real: the formal apparatus of democracy can be used to naturalize and legitimize violations in ways that would be impossible in an openly authoritarian system.

The starting point, as always, must be the suffering of real people.

CHAPTER ONE: THEORIZING REFORM IN A STATE OF NORMALIZED VIOLATION

1.1 The Problem of Reform Under Conditions of Democratic Authoritarianism

The theoretical literature on democratic backsliding has advanced significantly since 2016, which is roughly when the global community began recognizing that the threat to democracy in the twenty-first century came not primarily from military coups or totalitarian seizures but from the gradual erosion of democratic substance while democratic forms were maintained. Steven Levitsky and Daniel Ziblatt, in their 2018 work How Democracies Die, traced the mechanisms of what they called "democratic erosion," the slow, piecemeal dismantling of constitutional norms, institutional independence, and the unwritten rules of democratic behavior that give formal democratic structures their functional meaning. Yascha Mounk, in The People versus Democracy, distinguished between liberal democracy (rights-protecting and accountable) and illiberal democracy (electorally legitimate but rights-violating). Fareed Zakaria's earlier concept of illiberal democracy, from his seminal 1997 Foreign Affairs article, traced the same phenomenon.

India fits squarely within this analytical framework. As documented across the preceding parts, India maintains the formal apparatus of democracy: regular elections, an independent judiciary (in formal terms), a free press (in formal terms), a robust civil society (in diminished but surviving form), and a constitution that contains some of the most elaborate rights guarantees in the world. What has been eroded is the substance behind the forms: the independence of the judiciary in practice, the actual freedom of the press in an environment of corporate capture and legal harassment, the actual civic space available to civil society in an environment of FCRA suppression and UAPA persecution, and the actual enjoyment of constitutional rights in an environment of systematic violation and comprehensive impunity.

The distinction between formal and substantive democracy is the starting point for any serious theory of reform under these conditions. The reform agenda that makes sense for a fully authoritarian state, which has abolished elections and formal constitutional rights, is not the same as the reform agenda that makes sense for a democratically illiberal state that maintains both while systematically undermining both. In the fully authoritarian case, the primary challenge is creating the political space for democratic transition. In the democratically illiberal case, the primary challenge is revitalizing and filling with substance the formal democratic and constitutional structures that already exist.

This distinction has profound theoretical implications, developed with particular clarity in the 2024 and 2025 academic literature on comparative authoritarianism. Anna Grzymala-Busse, in her comparative work on state capture in Central and Eastern Europe, distinguishes between what she calls "state capture" (the transformation of state institutions into instruments of ruling party interests) and "state replacement" (the creation of parallel structures that bypass captured institutions). India in 2026 exhibits primarily the first of these: the state institutions have not been replaced but have been captured and redirected. This is both worse and better than outright replacement: worse because captured institutions retain the legitimacy of their original form while performing a different function, making the violation less visible; better because the institutions themselves, with their legal frameworks, their professional cultures, their institutional memories, and their potential for revitalization, remain available as reform vehicles if the political conditions change.

Levitsky and Ziblatt's analysis suggests that the reversal of democratic erosion requires what they call "constitutional hardball," the willingness of opposition forces, civil society, and democratic institutions to resist the erosion actively and at cost. This concept is particularly relevant to India in 2026, because the tradition of "constitutional hardball" has been practiced exclusively by the BJP and its associated organizations, while opposition forces have often been reactive, defensive, and insufficiently willing to use the full range of political and constitutional tools available to them. The Supreme Court's decision in Kesavananda Bharati to establish the basic structure doctrine was a form of constitutional hardball by the judiciary. The Emergency of 1975, paradoxically, generated the constitutional hardball response of the 1977 elections that defeated Indira Gandhi. The question is what forms of constitutional hardball are available and appropriate in the current moment.

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1.2 The Reformist Paradox: Using the Master's Tools

The theoretical challenge of reform within a system that has been systematically weaponized against reform is captured in Audre Lorde's famous formulation that the master's tools will never dismantle the master's house. Applied to Indian constitutional politics, the question is whether the tools of the existing legal and constitutional system, created partly by colonialism and now partially captured by Hindu nationalism, can be used to produce transformative accountability or whether the structural character of the system requires a more fundamental political transformation that lies outside the existing legal framework.

The history of Indian constitutional jurisprudence offers both grounds for hope and grounds for skepticism. The Supreme Court has, at its best, used the constitutional tools available to it in genuinely transformative ways: the basic structure doctrine to protect constitutional integrity, the expansion of Article 21 to include economic and social rights, the development of public interest litigation as a mechanism for holding the state accountable for its constitutional obligations toward the most marginalized, the Vishakha guidelines on sexual harassment in the workplace, the decriminalization of homosexuality in Navtej Singh Johar, and numerous other decisions that have used formal legal tools to produce outcomes that challenge the existing power structure.

But these successes have been accompanied by equally significant failures: the capitulation of the Supreme Court during the Emergency in ADM Jabalpur, the upholding of Article 370 abrogation, the refusal to stay the CAA, the Watali judgment on UAPA bail that effectively creates a presumption of guilt in terrorism cases, the delays in hearing constitutional challenges to legislation that affect millions of people's rights while the legislation is enforced against them. The pattern of the Supreme Court's jurisprudence suggests that formal legal tools can be used both to protect rights and to legitimize their violation, and that which of these directions the tools are used in depends critically on the political and professional context in which the judiciary operates.

The legal philosopher Joseph Raz's analysis of what he calls the "service conception" of legal authority is relevant here. Raz argues that legal authority is legitimate when it helps those subject to it to comply better with the reasons that apply to them than they could by acting on their own judgment. A Supreme Court that interprets the Constitution in ways that prevent state actors from violating rights is performing a service function: it is helping the state comply with the constitutional obligations that apply to it. A Supreme Court that upholds state actions that violate rights, through excessively deferential review, through procedural manipulations that delay resolution of constitutional challenges, or through interpretive creativity deployed in service of executive interests rather than constitutional principles, is performing the opposite of a service function: it is providing legitimacy to violations and thereby deepening them.

The question of reform through legal channels therefore cannot be answered in the abstract. It depends on: the character of the specific legal tools being used; the composition and political orientation of the courts at the relevant moment; the quality and persistence of the legal advocacy being deployed; the broader political context that shapes what courts feel able to do; and the extent to which legal victories are matched by political mobilization that ensures their enforcement.

1.3 Historical Precedents for Reform: Learning from Other Trajectories

The comparative literature on democratic recovery provides important lessons for thinking about the possibilities of reform in India. Three historical trajectories are particularly relevant: the recovery of South Korea from military authoritarianism, the constitutional reconstruction of post-apartheid South Africa, and the transitional justice processes of Argentina and other Latin American states following military dictatorship.

South Korea's democratic transition, which moved from military rule to competitive democracy between 1987 and the early 1990s, was the product of sustained civil society pressure, a student and labor movement that proved willing to engage in prolonged and costly confrontation with the state, and an ultimately pragmatic response from segments of the ruling class that recognized the economic and international costs of continued repression. The 2002 election of Roh Moo-hyun and the 2017 impeachment of Park Geun-hye (following the massive "candlelight revolution" protests) demonstrated the continued vitality of South Korean democratic culture and the capacity of sustained popular mobilization to produce constitutional accountability.

The South Korean case is instructive for India because it demonstrates that democratization does not require a simple linear progression. South Korea experienced decades of authoritarian rule under strong formal democratic procedures before the substance of democracy was filled in. The trajectory suggests that the formal apparatus of democracy creates opportunities for popular mobilization that can produce substantive democratic outcomes even after prolonged suppression, if civil society can organize effectively and if the costs of authoritarianism become sufficiently visible to broad segments of the population.

South Africa's post-apartheid constitutional reconstruction is the most elaborate and self-conscious attempt in world history to design legal and institutional mechanisms for the simultaneous achievement of truth, accountability, justice, and reconciliation after a period of systematic human rights violation. The Truth and Reconciliation Commission, established under the Promotion of National Unity and Reconciliation Act of 1995, combined conditional amnesty for perpetrators of gross violations of human rights with public truth-telling, reparations, and institutional reform recommendations. The process was deeply imperfect: many perpetrators did not apply for amnesty and were therefore legally protected by the prohibition on evidence used in the TRC process; reparations were paid late and inadequately; institutional reform recommendations were inconsistently implemented; and many victims felt the process had provided truth without adequate justice.

But despite its imperfections, South Africa's TRC process established the foundational principle that systematic human rights violations demand systematic accountability, and that accountability requires institutional mechanisms that are specifically designed to address the scale and systemic character of the violations. This principle is directly applicable to India, where the scale and systemic character of violations across the domains of caste, religion, region, gender, and political identity demand institutional mechanisms that go far beyond individual prosecutions or piecemeal litigation.

Argentina's experience with transitional justice, which began with the 1985 trial of the military juntas responsible for the "dirty war" of 1976 to 1983, went through a period of impunity laws and presidential pardons, and culminated in the reopening of prosecutions after the Supreme Court struck down the amnesty laws in 2003, demonstrates that accountability need not be abandoned even when it is politically difficult in the short term. The Argentine experience shows that truth-telling, even when it cannot immediately be followed by prosecution, creates an archive that makes future accountability possible; that civil society persistence over decades can outlast political resistance to accountability; and that international human rights norms and mechanisms can provide crucial support to domestic accountability efforts when domestic institutions are compromised.

The limitations of these comparative cases must also be acknowledged. South Korea had a relatively homogeneous national culture that provided a shared democratic aspiration across partisan lines. South Africa's TRC operated in the specific context of a negotiated democratic transition in which the ANC had assumed political power and could design the accountability mechanisms. Argentina's accountability process was possible because the military had been discredited by the Falklands war and economic failure. India's situation is different in important ways: the ruling party remains electorally competitive, the violations are deeply embedded in a caste system that predates any modern state, and the international environment is less favorable to human rights accountability than it was in the post-Cold War moment when many transitional justice processes were established.

1.4 The Theory of Democratic Resilience

The concept of democratic resilience, which has gained significant traction in the academic literature since 2018 and which appears prominently in the HRW World Report 2025's observation that India demonstrated "meaningful democratic resilience" when voters denied Modi the electoral majority he sought in the 2024 elections, requires careful theoretical examination. The concept refers to the capacity of democratic systems to resist, absorb, and recover from pressures toward authoritarianism without losing their essential democratic character.

Varieties of democratic resilience theory can be identified in the recent literature. Anna Grzymala-Busse's work emphasizes institutional resilience: the capacity of formal institutions, particularly courts, electoral commissions, and constitutional bodies, to resist capture and maintain their functional independence. Aziz Huq and Tom Ginsburg's 2018 Yale Law Journal article "How to Lose a Constitutional Democracy" identifies the same phenomena from the perspective of constitutional resilience, arguing that some constitutional systems are more robust to democratic erosion than others based on their specific design features, including veto points, countermajoritarian institutions, and civic enabling provisions.

Ozan Varol's concept of "stealth authoritarianism," developed in his 2015 Harvard International Law Journal article and extended in subsequent work, is particularly relevant to India. Varol argues that what distinguishes contemporary authoritarian erosion from classic authoritarianism is the use of formally legitimate legal mechanisms, including constitutional amendments, statutory legislation, and judicial decisions, to accomplish authoritarian objectives. Stealth

authoritarianism retains democratic legitimacy precisely by routing its most significant moves through legal forms that create the appearance of constitutional compliance. The abrogation of Article 370 through a presidential order citing the consent of a governor who was acting on behalf of a non-existent legislature is a perfect example of stealth authoritarianism: an unconstitutional act accomplished through formally constitutional procedure.

The resilience that matters against stealth authoritarianism is not primarily institutional but social and political. Institutions can be captured precisely because they depend on individuals who respond to political incentives, professional pressures, and social norms. The deeper resilience is the set of political and social practices, norms, and values that create demand for genuine democratic accountability, that make citizens unwilling to accept violations of the constitutional order as normal, and that generate the political pressure that institutions need to function accountably.

The 2024 Indian election results, in which the BJP lost its outright majority and was forced to govern in coalition for the first time in a decade, are evidence of a degree of democratic resilience in the electorate that some analysts had questioned. The election did not produce a change of government, and the coalition government has continued the BJP's fundamental agenda. But the signal it sent, that the BJP's dominance was not electorally assured and that parts of the electorate were willing to express dissatisfaction at the ballot box even in a media environment heavily tilted toward the ruling party, is evidence of democratic resilience in the specifically narrow sense that Levitsky and Ziblatt use the term: the electorate's unwillingness to completely surrender its role as a check on political power.

1.5 The Concept of Constitutional Moments

Bruce Ackerman's theory of "constitutional moments," developed in his three-volume work We the People, provides another theoretical resource for thinking about reform possibilities in India. Ackerman distinguishes between "normal politics," in which ordinary day-to-day political activity proceeds within the framework established by the constitution, and "higher lawmaking" or constitutional politics, in which the fundamental principles of the constitutional order are contested and revised through extraordinary political mobilization.

Ackerman's point, adapted to the Indian context, is that fundamental constitutional change, the kind that addresses structural violations rather than merely their individual manifestations, requires extraordinary political mobilization of a scale and character that goes beyond ordinary electoral competition or litigation strategy. It requires what he calls a "constitutional moment": a period of heightened political consciousness, organized popular engagement, and transformative political energy that is capable of challenging and revising the fundamental premises of the existing order.

The anti-CAA protests of December 2019 and early 2020 had some of the characteristics of a potential constitutional moment: they were massive, sustained, geographically dispersed, and organized around a constitutional principle (the equality guarantee of Article 14) rather than a merely partisan objection. The participation of diverse communities, including Muslims, Hindus, Sikhs, Christians, students, women, and workers, in sustained Shaheen Bagh-style sit-in protests

suggested a potential for the broad coalition politics that constitutional moments require. The COVID-19 pandemic, which began in March 2020, disrupted the protests and prevented the full development of whatever constitutional moment was emerging.

The farmer protests of 2020 to 2021, which eventually forced the Modi government to repeal the three farm laws, are another example of a partial constitutional moment: a massive, sustained popular mobilization that achieved a specific political objective through non-electoral means. The farmer protests were significant both for their scale, involving millions of farmers from multiple states maintaining blockades on major roads into Delhi for over a year, and for their success, which demonstrated that organized popular pressure could force concessions from a government that had otherwise shown complete indifference to popular opposition.

Neither the CAA protests nor the farmer protests produced the kind of comprehensive constitutional transformation that would be required to address the structural violations documented in this textbook. But they demonstrate that the social and political capacities required for constitutional moments, the organizational infrastructure, the public mobilization capacity, the tactical sophistication, exist in India even in the current political environment.

CHAPTER TWO: JUDICIAL REFORM AND THE RECONSTRUCTION OF CONSTITUTIONAL ADJUDICATION

2.1 The State of the Judiciary in 2026: An Assessment

The International Commission of Jurists' January 2025 report, Judicial Independence in India: Tipping the Scales, represents the most comprehensive recent external assessment of the Indian judiciary's independence and accountability. The report's findings are disturbing. While acknowledging that India has a constitutionally insulated judiciary, the ICJ identifies multiple dimensions along which judicial independence has been eroded: the selection and appointment of judges, where the collegium system contains significant opacity and the executive retains effective veto power through the "memorandum of procedure" that governs consultations between the collegium and the executive; the transfer of judges, where the power to transfer High Court judges across the country creates a mechanism for rewarding ideological alignment and punishing independence; the absence of effective judicial accountability mechanisms beyond the rarely-used impeachment procedure; post-retirement employment of judges in executive-appointed positions creating problematic incentive structures during active service; and case listing and allocation practices that allow the Chief Justice to determine which judges hear which cases, creating opportunities for strategic manipulation of judicial outcomes in politically sensitive matters.

These structural problems have become more acute under the current political environment. The pattern of post-retirement appointment of former Supreme Court judges to executive-appointed positions, including the National Human Rights Commission, the National Consumer Disputes Redressal Commission, the Appellate Tribunal for Electricity, and various statutory boards, creates what legal scholars have described as a "revolving door" problem: judges who aspire to

post-retirement appointments have incentives during active service to avoid decisions that would antagonize the executive that controls those appointments. Whether or not individual judges consciously calculate this way, the structural incentive is clearly problematic from the perspective of judicial independence.

The ICJ report makes eleven specific recommendations for judicial reform. These include: establishing transparent and merit-based criteria for judicial appointments, published in advance and applied systematically rather than through opaque collegium deliberations; creating an independent judicial appointments commission that includes judges, legal professionals, and civil society representatives, while protecting against the executive capture that led the Supreme Court to strike down the National Judicial Appointments Commission in 2015; establishing a robust and independent judicial accountability mechanism that is governed by published rules, involves external participation, and is capable of addressing misconduct without the complete insulation or the complete executive control that are equally problematic; establishing clear rules to prevent conflicts of interest in post-retirement employment; and reforming listing and allocation practices to introduce systemic, rule-based assignment rather than discretionary assignment by the Chief Justice.

The case listing problem is particularly significant and has been documented in detail in the context of politically sensitive cases. The challenge to the CAA has been pending in the Supreme Court since December 2019. The challenge to the electoral bonds scheme was heard and decided relatively quickly after it reached the Constitution Bench. The challenge to the PMLA (Prevention of Money Laundering Act) amendments that dramatically expanded the Enforcement Directorate's powers was disposed of in a manner widely criticized by constitutional scholars. The pattern of which constitutional challenges are heard promptly and which are allowed to languish for years is not random: it correlates with the political interests of the ruling government.

The Supreme Court Observer's 2025 annual review, covering the court's work during 2025, noted that while the Court showed significant independence in some governance matters, insisting on constitutional offices' democratic accountability and invalidating executive practices that diluted tribunal independence, its record in matters directly affecting the rights of minorities and dissenters was more mixed. The Court granted important protections to journalists and academics facing politically motivated prosecution, including The Wire editors and the academic Ali Khan Mahmudabad, but these individual interventions do not address the systemic character of the violation patterns they respond to.

2.2 Public Interest Litigation: Promise, Decline, and Possibilities of Revival

Public interest litigation, the mechanism through which the Supreme Court and High Courts can be approached by any public-spirited person on behalf of those who cannot access courts themselves, was the great innovation of Indian constitutional jurisprudence in the 1970s and 1980s. Justices V.R. Krishna Iyer and P.N. Bhagwati developed PIL as an instrument for making constitutional rights accessible to the poorest and most marginalized, for addressing systematic violations that affected large numbers of people who could not individually fund litigation, and

for enabling courts to play a transformative role in governance that went beyond individual rights adjudication.

The achievements of PIL jurisprudence are real and significant: the right to food, the right to education, environmental protection, women's rights in the workplace, prison reform, rights of bonded laborers, the right to speedy trial, and countless other areas have been advanced through PIL. The mechanism has made the Supreme Court of India one of the most powerful and most accessed courts in the world for public law purposes.

But PIL has also generated significant problems, extensively analyzed in the jurisprudential literature. The explosion of PIL cases has contributed to the massive backlog of the Supreme Court, which had 80,982 cases pending as of February 2025. PIL has been misused by petitioners seeking to advance private interests under the guise of public interest, what the courts themselves have called "publicity interest litigation." And PIL adjudication has increasingly become a mechanism through which the Court bypasses democratic processes and legislative authority, substituting judicial preferences for political choices in ways that may not always be constitutionally appropriate.

More fundamentally, the PIL mechanism depends on judicial willingness to engage with the constitutional dimension of governance failures. When the Court is willing, PIL can be transformative; when it is not, the litigation produces procedural orders and fact-finding committees that accomplish little. The key variable is judicial political will, and in the current moment, that will is inconsistently present. For PIL to be revitalized as a genuine accountability mechanism, what is needed is not primarily procedural reform of the PIL system but substantive judicial commitment to the constitutional values that PIL was designed to advance.

The work of Upendra Baxi, whose jurisprudential vision was central to the development of PIL in India, is instructive here. Baxi consistently argued that PIL was valuable not merely as a litigation mechanism but as a site of political and social mobilization: the process of preparing a PIL petition required the documentation of violations, the organization of affected communities, the development of legal arguments, and the public articulation of rights claims. This organizational and epistemic function of PIL is independent of the outcomes of specific cases and remains important even when courts are less responsive than they should be.

2.3 The Collegium System and Judicial Appointments: Toward Reform

The system of judicial appointments through the collegium, in which the five most senior judges of the Supreme Court collectively decide on the appointment of new Supreme Court judges and the elevation of High Court judges to the Supreme Court, is one of the most distinctive and most debated features of Indian constitutional law. The system was invented by the Supreme Court itself through judicial interpretation of the constitutional provisions on appointments in the Second Judges Case (1993) and Third Judges Case (1998), reading the constitutional text's reference to consultation with the Chief Justice as requiring the effective primacy of the collegium over the executive in appointments.

The collegium system was justified as a protection against executive interference in judicial appointments, the concern that had motivated the Court's interpretive innovation. But it has generated its own accountability deficit: the collegium operates without published criteria, without any formal application process, without external participation or oversight, and without any mechanism for challenging or reviewing its decisions. Allegations of favoritism, nepotism, and ideological conformism in the collegium process have accumulated over years.

The National Judicial Appointments Commission, established by the Ninety-Ninth Constitutional Amendment and struck down by the Supreme Court in NJAC Case (2015), attempted to introduce external participation in judicial appointments through a commission that included the Law Minister and two eminent persons. The Court's decision to strike it down, on the ground that it would allow executive influence over judicial appointments, was constitutionally defensible but politically costly: it entrenched the collegium system's opacity while creating the impression that the Court was protecting its institutional privilege rather than constitutional principle.

The theoretical literature on judicial appointments in comparative constitutional law suggests a middle path. As the February 2026 analysis published on ensureias.com notes, substantive equality requires institutions to reflect social diversity, while excessive executive involvement may threaten independence and complete insulation from accountability may undermine legitimacy. The comparative experience of the United Kingdom's Judicial Appointments Commission, established under the Constitutional Reform Act 2005, demonstrates that independent appointments commissions can maintain judicial independence from executive control while introducing greater transparency, merit-based criteria, and diversity considerations into the process.

In the German model, Federal Constitutional Court judges are elected by the Bundestag and Bundesrat in a process that requires supermajority approval, effectively requiring cross-party agreement. While this involves legislative participation in judicial appointments, the supermajority requirement prevents any single party from packing the court. The Canadian model involves a judicial appointments advisory committee that reviews candidates and makes recommendations, with the final appointment made by the executive on the basis of those recommendations.

For India, the appropriate reform model would involve: published merit criteria for appointments, including specific competencies, legal expertise, and character requirements; a diverse appointments commission that includes judges, senior legal professionals, academic lawyers, and civil society representatives but excludes current political officeholders; a public consultation process that allows objections to specific candidates to be formally raised and considered; and transparency about the reasons for appointments and non-appointments that allows the process to be scrutinized without compromising the privacy of candidates.

The diversity dimension of judicial appointments is particularly significant in the Indian context. The Supreme Court has historically been overwhelmingly composed of upper-caste Hindu men from major metropolitan areas. Dalit judges have been extremely rare; Muslim judges have been few; women judges, while increasing in number, are still dramatically underrepresented; and judges from the northeast, from Adivasi communities, or from socially marginalized

backgrounds are virtually absent. A judiciary that does not reflect the diversity of the society it serves cannot fully understand the rights claims of that society's most marginalized members, and the existing appointment system, which operates primarily through personal networks within the upper-caste legal elite, systematically reproduces this homogeneity.

2.4 The Bail Reform Crisis and Procedural Justice

The systematic denial of bail in cases involving politically sensitive charges, particularly under the UAPA, represents one of the most concrete and immediate mechanisms of rights violation that judicial reform could address. As documented in the preceding parts, the effective standard for bail in UAPA cases, established by the Supreme Court's Watali judgment, requires the accused to establish a prima facie case against the prosecution's charge sheet, while the prosecution need only show that the accusation is "prima facie true" on a superficial reading of documents. This is not merely an anomalous outcome of a single judgment but reflects a broader culture of treating security-related pre-trial detention as presumptively justified.

The theoretical framework for bail reform is well established. The presumption of innocence, recognized in Article 20(3) of the Indian Constitution, Article 11 of the Universal Declaration, and Article 14 of the ICCPR, requires that detention before conviction be treated as an exceptional measure rather than a routine one. The principle codified in the maxim "bail is the rule, jail is the exception," which has been stated in numerous Supreme Court decisions, reflects this constitutional and international law principle. But the principle has been systematically honored in breach.

The Law Commission of India's 268th Report of 2017 recommended a comprehensive bail reform, including a statutory definition of the factors relevant to bail decisions, a maximum period of pre-trial detention that must trigger automatic review, and enhanced legal aid for those who cannot afford bail lawyers. These recommendations have not been legislated. The new criminal codes introduced in 2023 and 2024 failed to incorporate meaningful bail reform. The structural conditions that produce excessive pre-trial detention, including the adversarial culture of prosecution-oriented magistrates, the inadequacy of legal aid, the complexity of securing bail in multiple-count cases, and the specific UAPA bail standard, remain unaddressed.

The practical reform agenda includes: statutory reversal of the Watali bail standard to bring it into conformity with the presumption of innocence; automatic judicial review of detention after sixty days in cases where charges have not been filed; enhanced legal aid funding specifically for bail hearings in serious cases; development of non-custodial alternatives to bail, including electronic monitoring, regular reporting requirements, and community supervision; and training of magistrates and sessions judges specifically on the constitutional and international law standards for pre-trial detention decisions.

2.5 The Sedition and Anti-Terror Jurisprudence: Toward Constitutional Compliance

The jurisprudential problem of India's anti-terror and sedition-adjacent legislation requires engagement with the constitutional standards for permissible restriction on fundamental rights. Article 19(2) of the Indian Constitution permits restrictions on freedom of speech on grounds

including the security of the state, friendly relations with foreign states, public order, decency or morality, and contempt of court. But the Supreme Court has consistently held that these restrictions must satisfy the test of proportionality: the restriction must be rationally connected to the permitted ground, it must be the least restrictive measure necessary to achieve the objective, and its effects must not be disproportionate to the rights impact.

The proportionality test, developed most fully in the Supreme Court's decision in Justice K.S. Puttaswamy v. Union of India (the privacy judgment of 2017), provides a powerful constitutional tool for challenging the breadth of provisions like Section 152 of the BNS (the successor to sedition), the UAPA's "terrorist act" definition, and the FCRA's restrictions on civil society. The challenge is the willingness of courts to apply the test rigorously in politically sensitive cases, rather than deploying a deferential standard that accepts executive claims of security necessity without serious scrutiny.

The European Court of Human Rights' jurisprudence on Article 10 (freedom of expression) under the European Convention provides comparative guidance on how proportionality review should operate in security-adjacent contexts. The ECHR has consistently held that broad restrictions on expression that could encompass peaceable advocacy, political criticism, or journalistic investigation are not proportionate even when states claim security justifications, unless the restriction is specifically targeted at expression that creates a real and immediate danger of violence. The "clear and present danger" standard, or its European equivalent, provides the necessary limiting principle that India's domestic jurisprudence has applied inconsistently.

The Supreme Court's 2022 stay of Section 124A (sedition) represented a moment of judicial resistance to the use of overbroad restrictions on expression. But the government's replacement of the provision with Section 152 of the BNS, which achieves similar results through different vocabulary, requires a renewed constitutional challenge that applies the proportionality test rigorously to the new provision. The outcome of such a challenge, in the current judicial climate, is uncertain, but the challenge itself performs the documentary function of articulating the constitutional standard and creating the legal record on which future accountability depends.

CHAPTER THREE: ELECTORAL DEMOCRACY AND ITS LIMITS: REFORMING THE POLITICAL SYSTEM

3.1 The Election Commission: Independence, Capture, and the Integrity of Democratic Competition

The Election Commission of India, established under Article 324 of the Constitution as an autonomous constitutional body, is the guardian of the integrity of India's electoral democracy. In the decades following independence, the ECI was widely regarded as one of India's most robust and independent constitutional institutions, capable of enforcing the Model Code of Conduct, managing the enormous logistical challenge of Indian elections, and maintaining the fairness of the electoral process across five levels of government.

The independence of the Election Commission has been progressively compromised through the mechanism of appointment. Under the original constitutional arrangement, Election Commissioners were appointed by the President acting on the advice of the Prime Minister, without any legislative confirmation process or independent oversight. The Supreme Court, in Association for Democratic Reforms v. Union of India (2023), identified the appointment process as constitutionally problematic and directed that a selection committee be established to make appointments, pending legislation by Parliament. The Court's interim direction included the Chief Justice of India as a member of the selection committee.

The BJP government's response was to enact the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act in December 2023, which established a selection committee but explicitly excluded the Chief Justice of India from its membership. The selection committee under the new law consists of the Prime Minister, the Leader of the Opposition in the Lok Sabha, and a Cabinet Minister nominated by the Prime Minister. The effect of this composition is that the government always has a majority: the Prime Minister's own vote plus the Cabinet Minister's vote outnumber the Leader of the Opposition's vote by two to one. The law was immediately challenged before the Supreme Court as violating the constitutional principles established by the Association for Democratic Reforms judgment.

The practical consequences of a compromised Election Commission for human rights are direct and significant. An Election Commission that is not independent of the ruling party cannot enforce the Model Code of Conduct equally against all parties, which means that the ruling party's deployment of state resources for electoral purposes, the use of official helicopters for political campaigning, the distribution of welfare scheme benefits timed to elections, the use of government media for partisan purposes, and the delivery of inflammatory speeches by ruling party leaders that violate the code go unpunished. The complaint against Prime Minister Modi for alleged hate speech during the 2024 election campaign, which multiple observers argued clearly violated the Model Code, was handled with a caution that critics attributed to the ECI's reluctance to act against the ruling party.

The theoretical framework for electoral independence draws on the concept of procedural fairness in democratic theory, developed most influentially by Robert Dahl in his work on polyarchy and subsequently by Joshua Cohen and others in the deliberative democracy tradition. The argument is that democratic legitimacy depends not merely on the counting of votes but on the fairness of the conditions under which votes are cast: the equality of opportunity for different political actors to reach voters, the absence of intimidation and coercion at the ballot box, the accuracy of the voter register, and the neutrality of the electoral administration. When any of these conditions are compromised, the democratic legitimacy of the resulting electoral outcome is questioned even if the counting of votes is technically accurate.

Reform of the election commission appointment process, to insulate it from executive control, would require either legislative amendment (which requires the current government's cooperation) or judicial intervention of the kind that the Association for Democratic Reforms case initiated. The political landscape as of 2026 makes legislative reform unlikely, making

continued judicial engagement the primary avenue. But the judiciary's willingness to enforce its own directions against a government that has explicitly legislated around them is uncertain.

3.2 Electoral Bonds, Corporate Financing, and the Corruption of Democracy

The electoral bonds scheme, introduced in 2017 and struck down by the Supreme Court in February 2024 in Association for Democratic Reforms v. Union of India, represented the most brazen attempt in India's post-independence history to create a mechanism for opaque corporate financing of political parties that primarily benefited the ruling party. The scheme allowed corporations and individuals to purchase bonds from the State Bank of India and donate them to political parties without public disclosure of the donor's identity, while the SBI maintained records that the government could access.

The Supreme Court's judgment in the electoral bonds case, delivered by a five-judge constitution bench led by Chief Justice D.Y. Chandrachud, struck down the scheme as violating the voters' right to information about electoral funding under Article 19(1)(a). The judgment is one of the most important constitutional decisions in recent decades both for its substantive holding and for its analysis of the relationship between corporate political financing and democratic integrity.

The data disclosed following the judgment revealed a pattern that critics had long suspected: major corporations that had received significant government contracts, regulatory approvals, or other favorable treatment had purchased electoral bonds, predominantly redeemed by the BJP. The intersection of corporate funding and government favor, when examined through the specific cases of corporations that purchased bonds shortly after receiving favorable regulatory decisions, suggests a system of institutionalized quid pro quo that has corrupted the democratic process at its financial root.

The theoretical framework for understanding the relationship between campaign finance and democracy draws on the work of Lawrence Lessig in his analysis of "institutional corruption" and John Rawls's concept of fair equality of opportunity. Rawls argued that a just democratic system must maintain fair equality of opportunity for political participation, which means that the influence of economic resources over political outcomes must be constrained. A system in which access to government favor can be purchased through electoral financing is one in which Rawls's condition of fair political equality is systematically violated.

Reform of campaign finance requires comprehensive legislation on political party funding transparency, expenditure limits, public funding of political parties, and prohibition of corporate donations. The UK's Political Parties, Elections and Referendums Act 2000 and Germany's party finance law, which combines disclosure requirements with public funding calculated on the basis of votes received, provide comparative models. For India, the specific challenge is designing a system that provides sufficient public funding to allow parties to function effectively without public subsidy while preventing the capture of democratic politics by corporate interests.

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3.3 The Media Ecosystem and Democratic Information

The relationship between media freedom and democratic accountability is one of the most thoroughly documented in political science. Independent media serves the function of informing the public about the activities of government, creating the epistemic conditions necessary for informed democratic choice. When media is captured by interests aligned with the ruling party, the information flow on which democratic accountability depends is distorted, and the voter's ability to make an informed choice is compromised.

India's media landscape in 2026 is one in which this capture is advanced. Reporters Without Borders' 2025 Press Freedom Index ranked India 151st out of 180 countries, a ranking that has declined consistently across the BJP government's tenure. The ranking reflects the combination of legal harassment through FIRs, defamation cases, and UAPA charges; corporate capture through the alignment of major media ownership with BJP-friendly business groups; the loss of independent news organizations' financial viability through the withdrawal of government advertising; and the social media suppression documented through the suspension of tens of thousands of accounts following the Pahalgam attack.

The Editors Guild of India's report on media freedom for 2025 documented multiple cases of journalists arrested, charged, or subjected to administrative action for their reporting on sensitive subjects, including the Manipur conflict, the Pahalgam attack aftermath, and the treatment of minorities in BJP-governed states. The pattern is not random: journalists who report on violations against Muslims, Dalits, Adivasis, and Kashmiris face disproportionate legal and administrative pressure, while journalists who reproduce government narratives on these subjects face no adverse consequences.

The theoretical framework for media independence in a democracy draws on the "marketplace of ideas" tradition developed by John Stuart Mill in On Liberty and subsequently by Holmes and Brandeis in their famous free speech jurisprudence, as well as on the deliberative democracy theory associated with Habermas. Both traditions identify free public deliberation, which requires a diverse and independent media ecosystem, as constitutive of democratic legitimacy rather than merely instrumentally valuable to it. When the media ecosystem is captured, it is not merely that voters have less information: it is that the deliberative preconditions of democratic legitimacy are undermined.

Reform of the media environment requires multiple interventions: amendment of the broadcast regulations to prevent concentration of ownership across print, television, and digital platforms; reform of government advertising allocation to remove the punitive discrimination against critical media outlets; criminal justice system reform to prevent the use of FIRs as harassment mechanisms against journalists; implementation of a meaningful shield law protecting journalists' sources; and support for independent public interest journalism through foundation funding models that are legally protected from FCRA interference.

The specific problem of social media content moderation and government orders for content removal, illustrated most dramatically by the order to block over 8,000 accounts following the Pahalgam attack, requires both judicial oversight standards and legislative frameworks that

require transparency, specificity, proportionality, and appeal mechanisms before government takedown orders can be enforced. The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021, which give the government extensive powers over digital content without adequate procedural safeguards, require fundamental reform to bring them into conformity with Article 19(1)(a) and with the proportionality standards established in Puttaswamy.

3.4 The Opposition, Federalism, and Political Pluralism

One of the most significant democratic resilience resources in India that has been under-analyzed in the human rights literature is the federal structure and the consequent political pluralism that exists because different parties govern different states. The Opposition-governed states, including Tamil Nadu (DMK), West Bengal (Trinamool Congress), Karnataka (Congress), Jharkhand (JMM/Congress), and other states, provide important, if limited, alternatives to the BJP's governance model. They demonstrate that different policy choices are possible, they provide political bases from which opposition to the central government's agenda can be organized, and they create legal spaces in which civil society organizations that have been defunded by FCRA actions at the national level can operate.

The theoretical concept of "competitive federalism" in the context of human rights, which has been developed in the comparative literature on federalism and rights by scholars including Samuel Issacharoff and Daniel Halberstam, identifies federalism's capacity to generate alternative governance models and to protect rights-protective policies in subnational jurisdictions from central government suppression. India's federal structure, which gives states significant responsibilities for law and order, education, health, and social welfare, creates space for rights-protective policies at the state level even when the central government pursues the opposite.

Tamil Nadu's record on Dalit rights, social welfare, and educational access, though far from perfect, illustrates the difference that state-level policy can make. Kerala's comparatively robust public health system and strong civil liberties tradition, maintained through successive Congress and Left Front governments, demonstrates that India's states are not merely administrative units but genuine political communities with their own rights trajectories. Rajasthan's experiences when governed by Congress, including more robust implementation of the RTI Act and greater responsiveness to minority rights concerns, compared to its BJP-governed periods, illustrates the political variation that federalism enables.

The BJP's use of the Governor's role to destabilize non-BJP state governments, the misuse of President's Rule, and the use of central investigative agencies against opposition state governments, all documented extensively in previous parts of this textbook, represent attempts to undermine the federal pluralism that provides democratic resilience. Reform of the Governor's appointment and accountability mechanisms, the enforcement of the S.R. Bommai judgment's restrictions on President's Rule, and the development of institutional safeguards for the independence of central investigative agencies from political direction are all necessary components of preserving the federal dimension of democratic resilience.

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CHAPTER FOUR: CIVIL SOCIETY, SOCIAL MOVEMENTS, AND THE POLITICS OF RESISTANCE

4.1 Civil Society Under Siege: The Current Condition

The HRW World Report 2026 describes a civil society landscape in India that is dramatically diminished from what existed a decade earlier. The combination of FCRA revocations, UAPA prosecutions, tax investigations by the Enforcement Directorate, defamation cases, and the social atmosphere of intimidation created by mob violence and official rhetoric has produced what the report calls a systematic attempt to suppress civil society engagement with human rights documentation and advocacy.

Amnesty International India, as noted in the previous parts, has been effectively forced out of the country. The Ford Foundation was put on a watch list. Greenpeace India lost its FCRA license. The People's Union for Civil Liberties, one of India's oldest and most respected human rights organizations, has faced sustained pressure. The South Asia Justice Campaign documented in its 2026 Annual Report that the civil society space in India has contracted significantly across multiple indicators: the number of operational human rights NGOs, the volume of their international funding, the scope of their advocacy activities, and the confidence of their members to engage publicly on sensitive issues.

And yet civil society has not been eliminated. Significant organizations continue to function: the PUCL, though reduced in capacity; Amnesty International India, though operating in drastically reduced form; Human Rights Watch's India office, though it faces access difficulties; domestic organizations like the Human Rights Law Network, the People's Watch, the Lawyers Collective, the Association for Protection of Democratic Rights, and dozens of others that maintain their work despite the hostile environment. The Association of Parents of Disappeared Persons in Kashmir continues its decades-long documentation work. Dalit rights organizations continue to function in many states. Women's rights organizations continue to provide legal aid and advocacy.

The theoretical concept of "resilient civil society" has been developed in the comparative literature on authoritarian contexts, including the work of Marc Morje Howard on the weakness of civil society in post-communist Europe and Sidney Tarrow on the dynamics of social movements under conditions of repression. The core insight is that civil society capacity is not merely a function of legal permissions and resource availability: it is also a function of social capital, organizational tradition, professional commitment, and the moral and political vocation of the individuals who constitute it. These deeper foundations of civil society are more resilient than the organizational structures that manifest them, and they provide the basis for civil society revival when political conditions change.

4.2 The Bhima Koregaon Sixteen and the Politics of Martyrdom

The Bhima Koregaon case, analyzed in depth in the earlier parts of this textbook, illustrates one of the most significant dimensions of civil society resistance: the willingness of individuals to continue their advocacy work at personal cost, and the meaning that this willingness generates

for others. Father Stan Swamy, who died in judicial custody in July 2021 while awaiting trial on fabricated charges under the UAPA, has become a figure of moral authority that no conviction could have created. The conditions of his detention, including the government's refusal to provide him a sipper cup despite his Parkinson's disease that made drinking from a regular cup impossible, crystallized the specific cruelty of the system in a way that abstract descriptions of rights violation cannot.

The political theology of martyrdom is not merely a religious concept: it has a secular political dimension that political philosophers from Antigone to John Rawls have analyzed. The willingness of individuals to accept personal sacrifice for the sake of principle creates a moral authority that is unavailable to those who accommodate power. In the specific context of civil society under repression, the fact that people like Stan Swamy, Sudha Bharadwaj, Anand Teltumbde, and Vernon Gonsalves have maintained their commitment to advocacy work despite decades of imprisonment creates a model and a challenge for others who face similar choices.

Amnesty International's concept of "prisoners of conscience," individuals imprisoned for the peaceful exercise of internationally recognized rights, provides the international legal framework through which the Bhima Koregaon cases have been addressed. The UN Working Group on Arbitrary Detention issued opinions finding the detention of several Bhima Koregaon accused to constitute arbitrary detention under international law, opinions that India has ignored but that create an international legal record of the violations and provide a basis for future accountability demands.

4.3 Social Movements: Historical Analysis and Current Potential

The history of social movements in India since independence provides evidence both of the transformative potential of organized popular action and of its limits when confronted with a state that is both democratically legitimated and institutionally powerful. The Chipko movement, the Narmada Bachao Andolan, the Right to Information movement, the anti-corruption movement of 2011, the farmer protests of 2020 to 2021, and the anti-CAA protests of 2019 to 2020 all represent significant episodes of popular mobilization that have produced varying degrees of political and legal change.

The Narmada Bachao Andolan, led by Medha Patkar and sustained over three decades against the Sardar Sarovar Dam and its displacement of hundreds of thousands of tribal people, represents perhaps the most sustained and philosophically sophisticated social movement in post-independence India. Its trajectory illustrates both the achievements and the limits of social movement advocacy: the movement produced significant international attention, influenced World Bank policy on dam financing, generated important Supreme Court jurisprudence on the rights of displaced people, and maintained the visibility of Adivasi rights claims over decades. But it ultimately could not prevent the construction of the dam or ensure adequate rehabilitation of the displaced communities.

The Right to Information movement, which produced the RTI Act of 2005, represents a more successful example: a sustained advocacy campaign by civil society organizations, particularly the Mazdoor Kisan Shakti Sangathan in Rajasthan, that produced transformative legislation

enabling citizens to demand government documents and significantly reducing administrative opacity. The RTI Act has been used to document violations, expose corruption, and hold government accountable in thousands of individual cases.

The farmer protests of 2020 to 2021 produced the most concrete recent success: the repeal of three agricultural laws under sustained popular pressure. But the success also revealed limits: the government repealed the laws but neither acknowledged wrongdoing nor addressed the underlying issues of agricultural crisis, farm prices, and debt that had motivated the protests. The repeal was a tactical retreat rather than a principled change of direction.

The theoretical analysis of social movement success and failure draws on the resource mobilization theory of McCarthy and Zald, the political opportunity structures analysis of Tarrow and Tilly, and the framing theory of Snow and Benford. Applied to the Indian context, these frameworks suggest that social movements are most effective when: they have access to organizational resources including leadership capacity, financial support, communication infrastructure, and legal expertise; they operate within a political opportunity structure that includes at least some sympathetic institutional actors, whether courts, opposition politicians, or international bodies; and they frame their claims in ways that resonate with broad publics rather than merely specialized advocacy communities.

The specific challenge for human rights-oriented social movements in India in 2026 is that the political opportunity structure has contracted significantly: courts are less reliably sympathetic than they were in earlier periods, opposition politicians are more cautious about association with minority rights advocacy for fear of electoral costs, and the international community's attention is divided and its leverage limited. Under these conditions, the most promising social movement strategies are those that build long-term organizational capacity, maintain documentation that creates future accountability possibilities, and develop the alliances across the boundaries of caste, religion, and region that constitute the social foundations of a broad democratic coalition.

4.4 The Role of Lawyers and the Human Rights Bar

The survival of a human rights bar, of lawyers who are willing to represent politically sensitive clients, to challenge government overreach in court, and to maintain the accountability function of the legal system against executive pressure, is one of the most critical resilience factors in the current Indian legal landscape. The Bhima Koregaon case includes several lawyers among the accused, a chilling signal of what is at stake. But a significant community of human rights lawyers continues to work, including the staff of the Human Rights Law Network, the lawyers who represent UAPA accused, the Kashmiri lawyers who challenge PSA detentions, and the PIL practitioners who continue to bring accountability claims before the Supreme Court and High Courts.

The Bar Council of India's failure to protect the professional independence of lawyers who face retaliation for their advocacy work, discussed in earlier parts, represents a critical institutional failure. The reform of the bar councils to create effective protection for advocates against politically motivated FIRs, harassment, and professional retaliation requires statutory amendment and institutional redesign. The comparative model of the New York State Bar

Association's advocacy for lawyers under threat, or the International Bar Association's Human Rights Institute's country reports and advocacy on lawyers at risk, provides examples of professional association structures that can provide meaningful protection.

The UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, establish the international framework for the protection of lawyers. The Principles specifically state that governments must ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment, or improper interference, and that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. These principles are directly applicable to the Indian situation, where lawyers who represent Kashmiri militants, UAPA accused, and human rights organizations have been subjected to exactly the forms of intimidation and identification that the Principles prohibit.

4.5 Digital Activism and Its Possibilities

The emergence of digital platforms as a space for human rights advocacy, documentation, and solidarity-building has been one of the most significant developments of the last decade for civil society operating in repressive environments. The viral spread of the video showing the naked parade of Kuki-Zo women in Manipur in 2023 is one example of how digital documentation can force accountability from a government that would otherwise have maintained complete information control over events in a conflict zone. The social media mobilization during the anti-CAA protests is another example of digital platforms' capacity to organize across geographic and communal boundaries.

But the government's response to digital activism has been increasingly sophisticated. The suspension of 8,000 social media accounts following the Pahalgam attack, the Internet shutdown in Kashmir, the prosecution of social media users under IT Act provisions and the BNS for posts critical of the government, and the Pegasus spyware surveillance of journalists and activists documented in the 2021 international investigation all represent systematic attempts to suppress digital activism and monitor digital civil society.

The theoretical framework for digital rights as human rights has been developed most comprehensively by David Kaye, the former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in his 2019 book Speech Police: The Global Struggle to Govern the Internet. Kaye argues that the regulation of digital expression must be evaluated against the same standards that apply to regulation of expression generally: necessity, proportionality, and legality. Internet shutdowns, which are among the most extreme forms of digital expression restriction, must meet a correspondingly high standard of justification that they virtually never satisfy.

The Access Now and SFLC.in documentation of Indian internet shutdowns provides the empirical foundation for challenging them under both domestic constitutional law and international human rights law. The Supreme Court's Anuradha Bhasin judgment established the constitutional framework; what is needed is its consistent enforcement through contempt

proceedings in cases where the government continues to impose shutdowns without meeting the proportionality standard the Court established.

CHAPTER FIVE: THE INTERNATIONAL HUMAN RIGHTS SYSTEM: PRESSURE, ENGAGEMENT, AND THE LIMITS OF EXTERNALITY

5.1 The Architecture of International Human Rights Accountability

The international human rights system, developed over the seventy-five years since the adoption of the Universal Declaration of Human Rights in 1948, comprises a complex and increasingly dense network of treaty bodies, special procedures, universal periodic review mechanisms, and UN Charter-based organs that collectively constitute the most comprehensive attempt in history to create international accountability for the human rights conduct of states.

India's relationship with this system is deeply ambivalent. India is a party to most major human rights treaties: the ICCPR, the ICESCR, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), though notably India has signed but not ratified the CAT. India actively participates in the UN Human Rights Council, where it was elected for a new term for 2026 to 2028 despite the documented deterioration in its domestic human rights situation, as Countercurrents reported in April 2026. India engages with the Universal Periodic Review process, though it accepts recommendations selectively and with significant qualification.

At the same time, India consistently resists the most consequential forms of international accountability: it is not a party to the Rome Statute of the International Criminal Court; it has not accepted the individual petition mechanism under the ICCPR's Optional Protocol; it consistently dismisses international criticism as interference in its internal affairs; and it has not invited the UN Special Rapporteur on extrajudicial killings to visit India since 2000, maintaining a longstanding pattern of denying access to UN special procedures in conflict-affected regions.

The tension between India's formal participation in the international human rights system and its substantive resistance to its accountability mechanisms is not mere hypocrisy. It reflects a deliberate strategy: engaging enough with international bodies to maintain the diplomatic status and international legitimacy that UN Human Rights Council membership confers, while limiting the system's practical accountability capacity by refusing the specific mechanisms, individual petition rights, special procedure access, ICC jurisdiction, through which international norms could be enforced against specific individuals and specific acts.

Understanding this strategy is essential for designing reform advocacy that engages the international system effectively. The goal of reform advocates must be to increase the costs of selective engagement and selective compliance, to use the mechanisms that are available as

effectively as possible, and to build the international coalition pressure that can create diplomatic costs for India's most egregious violations.

5.2 The UN Treaty Body System: Opportunities and Limitations

The UN Human Rights Committee, which monitors compliance with the ICCPR, issued its most recent comprehensive review of India in July 2024 following consideration of India's fifth periodic report. The Committee's concluding observations are a comprehensive indictment of India's compliance with its ICCPR obligations. The Committee raised concerns about: discrimination and violence against minority communities, particularly Muslims and Dalits; the use of broad and ill-defined laws to restrict civil liberties, including the UAPA and FCRA; impunity for security forces, particularly in relation to AFSPA; conditions in places of detention; the rights of indigenous peoples; the situation of religious minorities; and the lack of protection for human rights defenders.

These concluding observations are not binding in the same sense as domestic court judgments: they do not create directly enforceable obligations. But they have important practical significance. They create a publicly available record of the Committee's assessment of India's compliance with its treaty obligations, against which future compliance can be measured. They provide a framework of specific recommendations that civil society organizations can use to advocate for domestic reforms. They create diplomatic pressure through the UN system that affects India's international relationships and reputation. And they provide legal ammunition for foreign courts and adjudicators who must assess the human rights situation in India in the context of asylum claims by Indian nationals.

The use of the treaty body system by civil society organizations to submit shadow reports, which provide alternative information to the state party's official report, is a particularly important reform advocacy tool. Organizations like Human Rights Watch, Amnesty International, the Human Rights Law Network, and specialized organizations focused on Dalit rights, Muslim minority rights, and Kashmir have submitted detailed shadow reports to the Human Rights Committee, CERD, CEDAW, and other treaty bodies. These reports are used by the treaty body members in formulating their questions to the Indian government delegation and their concluding observations.

The CERD Committee, which monitors compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, is particularly relevant to the caste discrimination dimension of India's human rights situation. CERD has consistently taken the position, against India's objection, that caste-based discrimination falls within the scope of "descent-based discrimination" prohibited by the Convention. India's formal position is that caste is a matter of social tradition rather than racial discrimination and therefore outside CERD's scope. CERD's 2024 review specifically called on India to end the arbitrary detention of Rohingya and to address discrimination in multiple contexts.

5.3 The UN Special Procedures: Engagement, Access, and Impact

The UN special procedures system, consisting of Special Rapporteurs, Independent Experts, and Working Groups appointed by the Human Rights Council to examine specific thematic issues or country situations, provides one of the most flexible and potentially effective mechanisms for international human rights accountability. Special Rapporteurs can communicate directly with governments about specific cases, issue public statements on situations of concern, conduct country visits, and present reports to the Human Rights Council and the UN General Assembly.

Multiple Special Rapporteurs have engaged with India's human rights situation in 2024, 2025, and 2026. The Special Rapporteur on the situation of human rights defenders has documented cases of defenders imprisoned under the UAPA. The Special Rapporteur on extrajudicial, summary or arbitrary executions has called for AFSPA's repeal. The Special Rapporteur on the rights of indigenous peoples has addressed the situation of Adivasi communities. The UN Special Rapporteurs' November 2025 expression of alarm about the internet shutdowns and social media account suspensions following the Pahalgam attack, as documented in the HRW World Report 2026, is a recent example of the special procedures system's engagement with specific situations.

India's response to Special Rapporteur communications follows a consistent pattern: dismissal of concerns as based on "selective, biased, and politically motivated" information; assertion that the situations described are domestic matters in which international bodies have no jurisdiction; and invocation of India's democratic status as evidence that its domestic processes provide adequate accountability. This response strategy is sophisticated because it does not directly engage with the specific factual allegations, which India cannot convincingly deny, but instead challenges the legitimacy of the accountability mechanism itself.

The most effective reform advocacy strategy in relation to special procedures is to maintain consistent engagement: to provide the Rapporteurs with specific, well-documented cases and systematic evidence, to follow up on communications that have been submitted, to use the public statements of Rapporteurs in domestic litigation and advocacy, and to mobilize international media attention on cases where Rapporteurs have spoken.

The Working Group on Arbitrary Detention, whose opinions on the detention of Bhima Koregaon accused have found multiple detentions to constitute arbitrary detention under international law, provides a particularly important tool. While India is not required to implement WGAD opinions, the opinions create significant international reputational costs and provide strong legal arguments in domestic habeas corpus proceedings. The use of WGAD opinions in Indian courts has been contested: some High Courts have given them significant weight while others have dismissed them as not binding. The Supreme Court has not provided definitive guidance on the weight to be given to WGAD opinions in domestic habeas proceedings, which is a gap that reform advocates should seek to fill through strategic litigation.

5.4 The Universal Periodic Review: A Platform for Accountability Diplomacy

The Universal Periodic Review, established by the Human Rights Council in 2006, subjects every UN member state to a comprehensive review of its human rights situation every four years, with recommendations from other member states that the state under review can accept, partially accept, or reject. India's fourth cycle review, scheduled for 2026, provides an important platform for accountability diplomacy.

The UPR mechanism's genius is that it subjects even the most powerful states to peer review, making it more politically sustainable than country-specific mechanisms that target individual states. All UN member states have been reviewed, including the United States, China, Russia, and India. The political theater of peer review, in which each state faces scrutiny and is expected to engage with recommendations, creates normative pressure that does not depend on enforcement mechanisms.

India's response to UPR recommendations has followed the pattern of selective acceptance. In previous cycles, India has accepted recommendations on improving legal aid, enhancing women's rights, addressing caste discrimination, and various other matters while rejecting recommendations specifically addressing Kashmir, the UAPA, AFSPA, and minority rights. The selective acceptance strategy allows India to demonstrate engagement with the UPR process while limiting its accountability on the most sensitive issues.

Reform advocates should use the 2026 UPR cycle as an opportunity for maximum documentation, maximum international engagement, and maximum diplomatic pressure on India to accept recommendations on the specific issues where its resistance is most conspicuous. The states most likely to submit critical recommendations are those with active human rights foreign policies: the Nordic states, Switzerland, Germany, the Netherlands, and Canada have historically been among the most assertive in UPR recommendations to India. Building coalitions among these states, and engaging with the delegations of states that have significant political leverage with India through trade and strategic relationships, is part of the UPR advocacy strategy.

The European Union's trade relationship with India, which includes ongoing negotiations for a free trade agreement, provides an important leverage point. The EU has established human rights clauses in its trade agreements that require partner countries to maintain minimum standards on democratic governance, the rule of law, and human rights. The inclusion of binding human rights commitments in any future EU-India trade agreement, with monitoring mechanisms and suspension provisions in case of serious violations, would be a significant structural accountability mechanism. The HRW recommendations to the EU on a new strategic EU-India agenda, published in May 2025, specifically advocated for this approach.

5.5 The International Criminal Court: Jurisdiction, Non-Party Status, and Alternatives

India's non-ratification of the Rome Statute of the International Criminal Court is a significant gap in the international accountability framework. The ICC has jurisdiction over the crime of genocide, crimes against humanity, war crimes, and the crime of aggression, when committed by nationals of states parties or on the territory of states parties. India is neither a state party nor has

it accepted ad hoc jurisdiction of the Court, meaning that crimes committed by Indian nationals on Indian territory fall outside the ICC's jurisdiction absent a UN Security Council referral.

The prospect of a UN Security Council referral of India's situation to the ICC is, realistically, near zero: India has the diplomatic support of Russia and China (who have their own reasons to oppose ICC accountability for situations in major powers) and the strategic partnership of the United States (which is itself not a Rome Statute party and has historically opposed ICC jurisdiction over its own nationals). The veto power of any of these three states prevents a Security Council referral.

Alternative accountability mechanisms have been proposed and partially implemented in other contexts. The UN Fact-Finding Mission on Myanmar (2018), established by the Human Rights Council, produced a detailed factual record of potential crimes against humanity and genocide against the Rohingya. The International Court of Justice proceedings brought by The Gambia against Myanmar under the Genocide Convention demonstrate that states can bring accountability claims against other states in the ICJ even without ICC jurisdiction, if the violations constitute genocide under the Convention's definition.

For India, the most relevant alternative accountability mechanism is the UN Human Rights Council's special procedures system, discussed above. While this falls far short of criminal accountability, it maintains documentation and creates normative pressure. The Human Rights Council's power to establish fact-finding missions, commissions of inquiry, and special rapporteur mandates on specific country situations provides a pathway to stronger accountability if sufficient political support can be assembled.

The principle of universal jurisdiction, under which states can prosecute serious international crimes regardless of where they were committed or who committed them, provides a theoretical avenue for accountability in foreign courts. Some European states, including Germany and France, have active universal jurisdiction statutes. Cases have been brought under universal jurisdiction against Syrian officials, Rwandan perpetrators, and others. The prosecution of Indian officials under universal jurisdiction for crimes in Kashmir, for example, is theoretically possible but practically and politically extremely difficult.

CHAPTER SIX: COMPARATIVE CONSTITUTIONALISM: WHAT OTHER DEMOCRACIES HAVE DONE

6.1 The Science of Constitutional Design: What Works

The field of comparative constitutional design has generated important empirical and theoretical insights about what constitutional provisions and institutional designs best protect against authoritarian erosion and rights violation. This literature, synthesized by scholars including Ginsburg and Huq, Comparative Constitutional Design (2012), Sujit Choudhry and others, provides valuable resources for thinking about what India might do differently.

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Several design principles emerge consistently from the comparative literature. First, the importance of multiple veto points: constitutional systems that require the agreement of multiple institutional actors for significant policy change are more resistant to authoritarian capture than systems that concentrate power in a single institutional locus. India's constitutional structure includes multiple veto points in theory: bicameral Parliament, federal division of powers, independent judiciary, and President's assent to legislation. In practice, the single-party dominance of the BJP in the 2019 to 2024 period reduced the practical effectiveness of these veto points by controlling the Rajya Sabha majority, dominating state governments in enough states to control the Council of States eventually, and appointing judges through the collegium system and Governors through the executive appointment process.

Second, the importance of constitutional entrenchment and the amendment threshold: constitutional provisions that can be amended by simple majority are more vulnerable to revision by transient majorities than those requiring supermajority approval or ratification by state legislatures. India's constitutional amendment procedure, which requires a two-thirds majority of Parliament present and voting plus ratification by half the state legislatures for certain provisions, is generally robust. But the basic structure doctrine, which adds an additional layer of protection against amendments that violate fundamental constitutional principles, has been the most important constitutional protection in practice. The maintenance and strengthening of the basic structure doctrine is therefore a crucial reform priority.

Third, the design of rights provisions: rights that are framed in clear, specific terms are more difficult to restrict without visible constitutional violation than rights framed in broad, abstract terms that permit multiple interpretations. India's rights provisions are generally well-drafted, but the breadth of the permitted restrictions under Articles 19(2) through 19(6) creates significant constitutional space for legislation that restricts fundamental freedoms. Reform of the restriction framework to require proportionality analysis, similar to the way in which the South African Constitution specifically mandates that all rights limitations must be "reasonable and justifiable in an open and democratic society," would provide a stronger constitutional foundation for rights protection.

Fourth, the design of emergency provisions: constitutional emergency clauses that are too easily invoked create opportunities for abuse that may outweigh their utility in genuine crises. India's emergency provisions, while formally constrained by the Forty-Fourth Amendment, continue to permit significant expansion of central power under emergency conditions. Reform of the emergency provisions to add further safeguards, including time limits, mandatory parliamentary approval, judicial review of emergency declarations, and specific constitutional protection of core rights even during emergencies, is a standard comparative constitutional design recommendation.

6.2 The German Constitutional Experience: Militant Democracy

The German Federal Constitutional Court's doctrine of "militant democracy" (streitbare Demokratie) provides one of the most developed comparative approaches to protecting constitutional democracy from internal subversion. The doctrine holds that democratic constitutional systems need not be "neutral" toward forces that seek to use democratic processes

to destroy democratic values: the constitution can be defended against movements and parties that seek to overthrow it even through formally democratic means.

The specific instrument of militant democracy in Germany is the constitutional prohibition of parties whose purposes or activities are directed at the abolition of the constitutional order, provided in Article 21(2) of the Basic Law, combined with the Federal Constitutional Court's power to rule on such prohibitions. The court has been cautious in applying this power, recognizing the chilling effect of party bans on democratic competition, and has upheld only one major party prohibition (the Socialist Reich Party in 1952) while refusing to ban the National Democratic Party in two sets of proceedings.

The relevance of the militant democracy doctrine to India is complex. The doctrine could, in principle, be invoked against Hindu nationalist organizations that seek to transform India from a secular state into a Hindu state by means that violate constitutional provisions, a use that civil society organizations have occasionally proposed. But in the current political context, the doctrine is far more likely to be invoked against Muslim organizations, leftist parties, or Kashmiri political organizations by the ruling government, given the pattern of using security laws to suppress minority and dissident political activities.

The broader lesson from the German experience is that constitutional democracy requires active defense of its fundamental values, not merely passive formal compliance with constitutional procedures. The German Grundgesetz (Basic Law) was designed specifically as a response to the experience of Weimar Germany, where a formally democratic system was used by the Nazi Party to destroy democracy. Its design includes specific provisions to prevent the recurrence of that experience: the eternity clauses in Article 79(3), which specifically prohibit constitutional amendments that affect human dignity or the federal, democratic principles of the constitution, provide a stronger analogue to India's basic structure doctrine.

For India, the German experience suggests the value of more explicitly constitutionalizing the anti-erosion principles that the Supreme Court has developed through the basic structure doctrine: writing into the constitutional text specific provisions that make certain democratic fundamentals unamendable, and establishing specific institutional mechanisms for defending constitutional democracy against subversion from within.

6.3 South Africa's Constitutional Court: Transformative Constitutionalism

The South African Constitutional Court, established in 1994 as the final arbiter of constitutional questions under the post-apartheid Constitution, has developed a jurisprudential approach known as "transformative constitutionalism" that is directly relevant to India's rights situation. The concept, developed most influentially in the work of Karl Klare and subsequently theorized by Theunis Roux, Dennis Davis, and others, holds that the constitution is not merely a framework for limiting government power but a mandate for the transformation of society in the direction of greater equality and human dignity.

Transformative constitutionalism requires courts to interpret constitutional rights not merely in terms of their formal content but in terms of their social purpose: the Constitution's commitment

to transforming a society marked by profound inequality and systematic human rights violation requires constitutional interpretation that actively advances that transformation rather than merely protecting a status quo ante. The Constitutional Court's socio-economic rights jurisprudence, which has required the government to develop plans for the progressive realization of the right of access to housing, healthcare, food, water, and social security, is the most significant expression of this transformative approach.

The Indian Supreme Court's development of social rights through the expansive interpretation of Article 21 parallels the South African approach in some respects, but there are important differences. The South African Constitutional Court operates under a constitution that explicitly includes socio-economic rights as justiciable provisions, with a specific "reasonableness" standard for evaluating government compliance. The Indian Supreme Court's social rights jurisprudence rests on judicial interpretation of a "right to life" provision rather than express constitutional text, making it more vulnerable to challenge and less clearly defined in its scope.

The transformative constitutionalism literature also emphasizes what Klare calls the "emancipatory potential" of constitutional text: the capacity of constitutional provisions to generate legal arguments and political demands that go beyond what the constitution's framers explicitly intended, toward the fuller realization of the values it embeds. In the Indian context, the transformative potential of provisions like Article 17 (abolition of untouchability), Article 15(4) (special provisions for the advancement of socially and educationally backward classes), and Article 21's expansive right to life has not been fully realized.

6.4 The Canadian Charter: Proportionality, Section 1, and Contextual Rights

The Canadian Charter of Rights and Freedoms, adopted in 1982, introduced a constitutional framework that has become one of the most influential in the world for the design of rights provisions and their limitations. The Charter's Section 1, which provides that the rights guaranteed are subject only to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society," established the framework within which the Supreme Court of Canada developed the Oakes test: a structured proportionality analysis requiring that any rights limitation have a pressing and substantial objective, that there be a rational connection between the limitation and the objective, that the limitation be minimally impairing of the right, and that the effects of the limitation be proportional to its objective.

The Oakes test provides a precise analytical framework that is more rigorous than India's current approach to rights limitation review. While the Indian Supreme Court has developed proportionality analysis in the Puttaswamy privacy judgment, its application has been inconsistent across different rights and different types of government action. The constitutionalization of a structured proportionality test, either through constitutional amendment or through the development of binding precedent by the Supreme Court, would provide a clearer and more enforceable standard for evaluating rights restrictions.

The Canadian Charter's dialogic character, expressed through Section 33 (the "notwithstanding clause") which allows Parliament or provincial legislatures to temporarily override certain Charter rights, is sometimes cited as a model for constitutional design that maintains democratic

accountability while protecting rights. But the notwithstanding clause has also been criticized for providing an escape hatch from judicial protection of rights that is potentially dangerous in politically charged contexts. The Indian constitutional design does not have an explicit analogue to Section 33, and the basic structure doctrine's constraint on constitutional amendment provides a stronger form of rights entrenchment.

6.5 The Indonesian and Brazilian Experiences: Reform Under Pressure

The constitutional transitions of Indonesia after 1998 and Brazil's return to democracy in 1985 provide examples of democratic recovery from authoritarian governance in large, ethnically diverse developing countries that have some analogical relevance to India's situation.

Indonesia's post-Suharto transition, which began in 1998 following the economic crisis and massive popular protests, involved a systematic process of constitutional amendment that transformed the 1945 Constitution from a vague and authoritarian document into a more rights-protective and democratically accountable framework. The amendments added a comprehensive bill of rights, established a Constitutional Court, created an independent Komnas HAM (National Human Rights Commission), established accountability for human rights violations in the past, and reformed the electoral system. Indonesia's experience demonstrates that constitutional reform of substantial scope is possible in a short period when political conditions create the opening.

The Indonesian Constitutional Court, established in 2003, has been notably more assertive than India's Supreme Court in reviewing executive and legislative action for constitutional compliance. Several major laws have been struck down, including provisions of the criminal code that restricted freedom of expression. The Indonesian experience also illustrates the persistence of human rights challenges even after constitutional reform: the military, which retained significant political and economic power through the transition period, has been implicated in ongoing human rights violations in Papua, where AFSPA-like impunity provisions have been applied.

Brazil's return to democracy following the military dictatorship of 1964 to 1985 involved the drafting of a new constitution in 1987 to 1988, the "Citizens' Constitution" (Constituicao Cidada), which is among the most comprehensive rights-protecting constitutions in the world. The 1988 Constitution not only guarantees civil and political rights but includes extensive social rights, environmental rights, Indigenous rights, and specific anti-discrimination provisions. The Brazilian Constitution also introduced one of the most powerful access to justice mechanisms in the world: the mandatory public defender system, the acao civil publica (public civil action) allowing civil society organizations to bring constitutional claims on behalf of diffuse interests, and the mandado de injuncao (injunction writ) allowing individuals to demand that courts fill legislative gaps that prevent the exercise of constitutional rights.

Brazil's experience also illustrates the vulnerability of democratic systems to populist authoritarian erosion: the Bolsonaro government of 2019 to 2022 systematically attempted to undermine the institutions of the 1988 constitutional order, including attacks on the Supreme Court, the electoral system, and civil society. The October 2022 election defeat of Bolsonaro and

his subsequent failed coup attempt demonstrate both the resilience of Brazil's constitutional democracy and the ongoing risk of its erosion.

CHAPTER SEVEN: TRANSITIONAL JUSTICE WITHOUT TRANSITION: THEORY AND POSSIBILITY

7.1 The Paradox of Transitional Justice in Ongoing Violations

The theoretical framework of transitional justice, developed initially to address accountability after political transitions from authoritarian governance to democracy, confronts an apparent paradox when applied to India: transitional justice is premised on a transition, a movement from one political regime to another. In India, the violations are ongoing, the regime that produces them is in power, and there is no immediate prospect of a political transition that would create the conditions for conventional transitional justice mechanisms.

The paradox is not unique to India. Scholars including Bronwyn Leebaw, in Judging State-Sponsored Violence, Imagining Political Change (2011), have developed what she calls "transitional justice without transition": accountability mechanisms that can be initiated in the midst of ongoing violations, that contribute to documenting violations for future accountability, that begin the work of acknowledgment and truth-telling even before political conditions create the possibility of full justice, and that build the social and political foundations for accountability processes that can be more fully developed when political conditions change.

This "without transition" approach is directly applicable to India. Several of its elements are already present in nascent form: the documentation work of civil society organizations constitutes a form of truth-seeking; the PIL jurisprudence of the Supreme Court constitutes a partial and imperfect form of accountability; the UN treaty body reviews constitute a form of international acknowledgment; and the continuing advocacy of civil society and human rights lawyers constitutes the political foundation for future fuller accountability.

The UN Secretary-General's 2004 report on transitional justice (S/2004/616) identified four core dimensions: truth-seeking, criminal justice, reparations, and guarantees of non-recurrence. Each of these dimensions can be partially advanced even in the absence of political transition, as Leebaw's analysis suggests. The challenge is to identify which elements of this four-dimensional framework can be advanced in the current Indian political context, what institutional mechanisms could be used or created to advance them, and how the partial advances made now can be preserved for the fuller accountability that future political change may make possible.

7.2 Truth-Seeking in the Indian Context

Truth-seeking, the systematic process of establishing an authoritative factual record of past and ongoing violations, is the transitional justice dimension that is most accessible in the current Indian political context, because it does not depend on the cooperation of the state and can be conducted by civil society organizations, academic researchers, and international bodies.

The model of the People's Tribunal, used extensively in India, is an important truth-seeking mechanism that operates outside the formal state apparatus. People's Tribunals are organized by civil society organizations to examine specific violations, receive testimony from witnesses and survivors, examine documentary evidence, and produce public reports. Notable examples include the Peoples Tribunal on AFSPA, the Independent People's Tribunal on the Shrinking of Democratic Space in India (2011), and multiple tribunals on communal violence and Dalit atrocities.

People's Tribunals are not courts; their findings are not legally binding; and they depend entirely on the willingness of civil society organizations to organize and fund them and of witnesses to come forward despite the personal risk. But they perform an important function: they create a formal, documented record of violations that is organized according to legal principles, they give victims a voice in an institutional setting, they mobilize public attention around specific violations, and they contribute to the archive that future accountability processes will require.

The academic documentation of violations, through scholarly research, investigative journalism, and the reports of international organizations, also constitutes a form of truth-seeking. The Orr-Nayyar-Noorani-Bidwai documentation of the Gujarat 2002 pogroms, published in Who Killed the Gujarat Muslims (2004), is an example of academic truth-seeking that maintains a factual record despite the failure of official accountability. More recent documentation of communal violence, police atrocities, and Dalit rights violations by organizations including People's Watch, PUCL, Human Rights Law Network, and international organizations, performs the same function.

The International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir, which produced detailed documentation of enforced disappearances and mass graves in 2009, is an example of organized truth-seeking specifically focused on the most serious violations in the most restricted access environment. The tribunal's methodology, which combined documentary evidence, witness testimony, forensic analysis, and legal assessment, provides a model for future truth-seeking exercises.

The challenge of truth-seeking in India is not primarily methodological but political: those who conduct truth-seeking on violations against Muslims, Dalits, Adivasis, or Kashmiris face legal and physical threats that deter documentation work. The UAPA prosecutions of human rights defenders, including the Bhima Koregaon accused, function precisely as warnings to those who might otherwise engage in truth-seeking activities. A reform strategy must therefore include protection of truth-seekers as a priority alongside the development of truth-seeking mechanisms themselves.

7.3 Reparations Theory and Practice

The concept of reparations for human rights violations has been developed in international law through the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2005. The Principles establish a comprehensive framework for reparations that includes: restitution (restoring the

victim to the situation before the violation); compensation (monetary payment for quantifiable harm); rehabilitation (medical, psychological, legal, and social services); satisfaction (acknowledgment, apology, commemoration, and other symbolic measures); and guarantees of non-recurrence (legal reforms and institutional changes to prevent future violations).

India has some mechanisms that could be described as partial reparations: the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act provides for compensation to victims of caste-based violence; various state schemes provide ex gratia payments to victims of communal violence; courts in PIL cases have occasionally ordered compensation for specific rights violations. But these mechanisms are fragmented, inadequately funded, inconsistently applied, and far from constituting the comprehensive reparations framework that the UN Principles describe.

The most significant conceptual development in reparations theory in recent years is the recognition of what David Gray calls "political reparations": the idea that reparative justice requires not merely compensation of specific past victims but structural changes in the political conditions that made the violations possible and that continue to affect the descendants of victims. This concept of structural reparations connects reparations theory to the broader reform agenda: the dismantling of the institutional mechanisms that produce impunity, the reform of the laws that enable violations, and the redistribution of power that addresses the structural inequality at the root of systematic violations.

Applied to Dalit rights specifically, structural reparations would require not merely compensation for specific atrocity victims but the enforcement and expansion of the reservation system, the redistribution of land, the dismantling of manual scavenging, the elimination of the caste-based assignment of "untouchable" occupations, and the reform of institutions, including the police, courts, and schools, that reproduce caste hierarchy in their everyday operation. This is a transformative political agenda that goes far beyond what any existing court can order or any executive willing to order but that the logic of reparative justice demands.

7.4 Guarantees of Non-Recurrence: Institutional and Legal Reform

The "guarantees of non-recurrence" dimension of transitional justice is directly connected to the reform agenda that this chapter has been developing. The UN Principles identify the following as guarantees of non-recurrence: ensuring effective civilian control over military and security forces; ensuring that all civilian and military proceedings abide by international standards; strengthening the independence of the judiciary; protecting persons in the legal, medical, and health-care professions, the media, and other related professions, and human rights defenders; providing human rights and humanitarian law education to all sectors of society; and reforming laws contributing to or allowing gross violations of international human rights law.

Each of these guarantees corresponds to a specific reform measure in the Indian context: effective civilian control of security forces requires AFSPA repeal and military accountability mechanisms; independence of the judiciary requires the collegium reform and accountability mechanisms discussed above; protection of human rights defenders requires UAPA reform and FCRA liberalization; human rights education requires curriculum reform in schools, colleges,

and law schools; and reform of laws contributing to violations requires amendment or repeal of the UAPA, the PSA, the anti-conversion laws, and the enabling provisions of the CAA.

The guarantee of non-recurrence that is most fundamental, and most difficult to achieve, is what the South African TRC called "institutional transformation": the reform of the institutions themselves, not merely their formal legal frameworks, to eliminate the cultural practices and informal norms that reproduce violations. The police's institutional culture of caste contempt toward Dalit victims cannot be changed merely by amending the Atrocities Act or issuing administrative circulars: it requires sustained institutional reform including recruitment reform, training, supervision, accountability mechanisms, and the gradual cultural change that only sustained institutional effort can produce.

CHAPTER EIGHT: ECONOMIC REFORM AND THE MATERIAL CONDITIONS OF RIGHTS

8.1 The Political Economy of Rights Deprivation

The preceding parts of this textbook have consistently identified the connection between economic inequality and rights violation. The caste system is simultaneously a system of social hierarchy and a mechanism of economic exploitation that assigns the most degrading and least compensated labor to those at the bottom of the hierarchy. The dispossession of Adivasi communities from their ancestral lands is simultaneously a violation of cultural and identity rights and a mechanism for the transfer of natural resource wealth from the poorest communities to the most economically powerful corporations. The targeting of Muslim communities through demolitions, economic boycotts, and discriminatory enforcement of economic regulations has economic as well as cultural and political dimensions.

The connection between economic inequality and rights violation is theorized most rigorously in the work of Henry Shue, whose concept of "basic rights" in his 1980 work of that title identifies the right to physical security, the right to subsistence, and the right to liberty as the minimum conditions of a life with rights. Shue argues that the right to subsistence is not a luxury aspiration but a prerequisite for the enjoyment of all other rights: without adequate food, shelter, healthcare, and economic resources, the formal rights guaranteed by a constitution are inaccessible to those who most need them. This argument has been extensively developed in the capabilities approach of Amartya Sen and Martha Nussbaum, which analyzes rights in terms of the actual capabilities people have to live flourishing lives rather than the formal entitlements they possess.

The application of the capabilities approach to India reveals a landscape of extreme deprivation for the most marginalized communities. The Global Hunger Index 2023 ranking of India 111th out of 125 countries reflects the inadequacy of food entitlements for the poorest. The Oxfam India Wealth Report 2024 finding that the top one percent holds over forty percent of national wealth reflects the extreme inequality that characterizes the distribution of economic resources. The combination of extreme inequality in resource access with systematic exclusion from the

political and legal processes through which resource claims are advanced creates the conditions for sustained multi-dimensional deprivation.

8.2 Land Reform and the Foundations of Economic Rights

Land reform is the most fundamental and most unfinished economic reform in India. The post-independence land reform agenda, which sought to break up the large landholdings of zamindars (hereditary landowners) and redistribute land to the landless poor, was implemented with sufficient inadequacy that it has been characterized by most serious analysts as a failure. Land continues to be distributed with profound inequality. The landless agricultural laborers, who are overwhelmingly Dalit and Adivasi, remain economically dependent on landowning upper-caste families in ways that reproduce the hierarchies of the caste system in economic form.

The Forest Rights Act of 2006, which recognized the rights of Adivasi communities to their ancestral forest lands, represented the most significant land rights reform of the post-liberalization period. But its implementation has been, as documented in earlier parts, deeply inadequate. The systematic rejection of claims, the bureaucratic obstruction of the recognition process, and the Supreme Court's 2019 order (subsequently stayed) that could have resulted in the mass eviction of millions of Adivasi families whose claims had been rejected, all demonstrate the depth of institutional resistance to meaningful Adivasi land rights.

The question of urban land rights is equally important in the context of the bulldozer demolitions documented in earlier parts. The demolition of homes and commercial properties without adequate legal process, disproportionately targeting Muslim communities, is also a massive and rapid redistribution of urban land and economic opportunity. The properties demolished are often in urban areas where land values are significant, and the demolition of informal settlements without compensation or rehabilitation effectively transfers economic resources from poor communities to the state and its allies in the real estate sector.

Genuine economic reform in the land rights domain would require: strict enforcement of the Forest Rights Act with mandatory recognition of all valid claims; reversal of land acquisition legislation that allows compulsory acquisition of community lands without adequate consent and compensation; impartial enforcement of anti-demolition protections, including the Supreme Court's October 2024 guidelines against bulldozer demolitions; and development of urban land security programs that provide legal title to informal settlement residents without discriminating by religion or community.

8.3 Labor Rights and Economic Exploitation

The labor rights dimension of human rights in India has been significantly transformed by the labor code reforms of 2019 to 2020, which consolidated twenty-nine central labor laws into four labor codes, simplifying the legislative framework but, according to many labor rights organizations and trade unions, diluting many of the protections that the original laws provided.

The four labor codes, covering wages, industrial relations, social security, and occupational safety, have been widely criticized by the Indian National Trade Union Congress, the Centre of

Indian Trade Unions, and other labor organizations for weakening protections in multiple areas: raising the threshold for enterprise size that triggers various requirements, reducing worker participation in industrial relations decisions, weakening the provisions requiring permission for layoffs and closures in larger enterprises, and reducing the scope of social security coverage.

The particular impact of these labor code changes on Dalit and Adivasi workers, who are disproportionately represented in the most vulnerable categories of informal, casual, and contract employment, is a direct human rights concern. Labor rights are not merely economic interests: they are recognized as human rights under Article 23 of the UDHR, the ICESCR, and multiple ILO conventions to which India is a party. The weakening of labor rights through legislative reform that systematically benefits employers at the expense of workers, in a political economy where the most vulnerable workers have the least political power, is a form of structural rights violation of the kind that the preceding parts of this textbook have documented across multiple domains.

8.4 The Right to Food, Public Distribution, and Economic Accountability

The right to food, which the Supreme Court has recognized as part of the right to life under Article 21 through the long-running PUCL case, has a complex relationship with the Modi government's welfare scheme programs. The expansion of subsidized food distribution through the National Food Security Act, the Pradhan Mantri Garib Kalyan Anna Yojana, and related schemes represents a genuine expansion of food entitlements to a large proportion of the population. The government's claim to have reduced hunger and food insecurity through these programs has some empirical foundation.

But the disjunction between the official claim and the Global Hunger Index ranking reflects a deeper problem with how welfare scheme success is measured. The coverage of food distribution schemes does not directly measure nutritional outcomes, which depend on the quality and diversity of food as well as its quantity. The hunger index's poor ranking for India reflects indicators of child stunting, wasting, and malnutrition that are determined not merely by food grain distribution but by the overall nutritional and health environment. And the distribution of welfare scheme benefits through voter identification mechanisms creates opportunities for discriminatory exclusion of minority communities, particularly in BJP-governed states where Muslim communities have documented experiences of exclusion from scheme benefits.

The accountability mechanisms for welfare scheme delivery are inadequate. The RTI Act provides a mechanism for demanding information about scheme implementation, but the 2019 amendments that weakened the RTI Act's protections for information commissioners have reduced its effectiveness. Civil society monitoring of scheme delivery, through organizations like the Right to Food Campaign, provides some accountability but depends on the organizational capacity that the FCRA has systematically degraded.

CHAPTER NINE: MEDIA, INFORMATION, AND THE EPISTEMIC CONDITIONS OF ACCOUNTABILITY

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9.1 Media Capture: The Systematic Destruction of the Fourth Estate

The concept of the "fourth estate," the media's role as an independent monitor of political power that complements the constitutional separation of powers, is well established in democratic theory. James Madison's design of the constitutional system included the freedom of the press as an essential complement to the formal institutional checks and balances: the press performs the accountability function for issues and actors that courts, legislatures, and the executive cannot effectively monitor themselves.

When the press is captured by interests aligned with the ruling political formation, this accountability function is lost. The result is not merely the absence of information: it is the active promotion of narratives that serve the interests of those in power, the suppression of information that would create accountability pressure, and the normalization of violations through framing that presents them as legitimate, necessary, or justified.

India's media landscape in 2026 exhibits advanced press capture, as documented throughout this textbook. The specific mechanisms are multiple: corporate ownership concentration in BJP-aligned groups, particularly the Adani Group's acquisition of NDTV; the withdrawal of government advertising from critical outlets; the use of legal harassment through FIRs and UAPA charges; the social atmosphere of intimidation created by mob attacks on journalists in specific regions; and the blocking of social media accounts and internet access in conflict-affected regions.

The theoretical analysis of media capture draws on the work of Elihu Katz and Paul Lazarsfeld on the "two-step flow" of media influence, subsequently developed by Maxwell McCombs and Donald Shaw into agenda-setting theory, which holds that the media does not determine what people think but determines what they think about. When the media agenda is systematically oriented toward framing Muslims as security threats, Dalits' demands for rights as anti-national, and critics of the government as Maoists or Pakistani agents, it shapes the cognitive environment within which political choices are made in ways that make accountability for violations impossible to demand.

9.2 The Digital Alternative: Promise and Peril

Digital media platforms have provided some countervailing capacity against the capture of traditional broadcast and print media. Investigative journalism organizations like The Wire, The Caravan, Newslaundry, The Print (though more centrist), and Article 14 have used digital distribution to reach significant audiences outside the traditional broadcast model. These organizations have been responsible for some of the most important accountability journalism in India, including the initial reporting on the Pegasus spyware surveillance of journalists and activists, detailed coverage of the Bhima Koregaon case, investigative reporting on the Adani Group's financial practices, and documentary coverage of communal violence and Dalit atrocities.

But these digital alternatives face severe constraints: they are financially precarious, dependent on subscriptions and donations in a news market dominated by advertising-funded media; they

face the same legal harassment mechanisms as traditional media, as illustrated by the Enforcement Directorate investigation of The Wire's founders and the sedition charges against its editors; and they reach primarily urban, educated, English-literate audiences rather than the broader population that consumes news primarily through Hindi and other regional language broadcast media.

The government's authority to issue takedown orders to digital platforms under the IT (Intermediary Guidelines) Rules, and to demand compliance from platforms on pain of losing their liability protections, creates a mechanism for content suppression that is more directly opaque than the corporate capture of traditional media: there is no shareholder or owner whose interests can be aligned with the government; instead, the government can directly order the removal of specific content or accounts and threaten the platform with loss of legal protection if it refuses.

The 2021 IT Rules and their subsequent amendments have been repeatedly challenged in various High Courts, with different courts issuing different interim orders and creating a patchwork of partially inconsistent jurisprudence on the validity of specific provisions. The challenge to the "Fact Check Unit," which was struck down by a division bench of the Bombay High Court in September 2024 as violating freedom of speech, was one of the most significant judicial engagements with digital censorship provisions. The Supreme Court's subsequent handling of the government's appeal illustrates the ongoing judicial contest over the regulatory framework for digital expression.

9.3 Building Information Infrastructure for Accountability

The reform agenda for media freedom requires more than the removal of specific repressive laws and practices. It requires the building of an information infrastructure that is structurally oriented toward accountability rather than power. This structural agenda includes:

Development of a genuine public broadcaster that is insulated from government control through an independent governance structure similar to the BBC's board model, with guaranteed and automatic funding that prevents government withdrawal as a pressure mechanism. All India Radio and Doordarshan currently operate as state broadcasters that serve government interests rather than as public service broadcasters that serve public information interests.

Development of a legal framework for journalism that includes a shield law protecting journalistic sources, defamation law reform that raises the threshold for criminal defamation and prevents the use of FIRs by powerful actors against individual journalists, and a press freedom ombudsman or media council with independent authority to investigate and adjudicate complaints of government interference with media freedom.

Reform of the Right to Information Act to reverse the 2019 amendments that weakened the independence of Information Commissioners, to expand the scope of proactively disclosed information, and to strengthen the penalties for non-compliance with RTI requests. The RTI Act in its original 2005 form represented one of the most powerful accountability legislation ever enacted in India, enabling ordinary citizens to demand government documents at minimal cost.

Its systematic weakening through amendment and administrative obstruction has reduced a transformative accountability tool to a less effective mechanism.

Development of legal aid and financial support mechanisms for independent journalists and civil society organizations engaged in human rights documentation, specifically to enable them to mount legal defenses against the SLAPP suits and criminal charges that are used to silence them. The Digital Freedom Fund in Europe and the Reporters Committee for Freedom of the Press in the United States provide models of organizations that provide legal defense resources specifically to journalists and media organizations facing legally motivated attacks.

CHAPTER TEN: CONSTITUTIONAL AMENDMENT AND THE REFORM OF ENABLING PROVISIONS

10.1 The Case for Constitutional Amendment

The preceding analysis has demonstrated that many of India's most significant human rights problems are rooted not merely in the practices of particular governments or the cultural failings of specific institutions, but in structural features of the constitutional framework itself. Constitutional amendment is therefore an essential, if not sufficient, component of comprehensive reform.

The case for constitutional amendment must be distinguished from the abuse of constitutional amendment that this textbook has documented. The Modi government has used constitutional amendment as a tool of rights restriction, most notably through the First Constitutional Amendment that inserted the Ninth Schedule and through subsequent amendments. The constitutional amendment power in Indian democracy is formally constrained by the basic structure doctrine and the supermajority requirement, but these constraints have not prevented its use for rights-restrictive purposes.

The reform agenda for constitutional amendment is oriented toward strengthening rights protection, increasing institutional independence, and eliminating enabling provisions that have been systematically abused. The amendments proposed here are not radical departures from the constitutional framework but fulfillments of its deepest commitments, drawing on the constitutional vision that Ambedkar articulated in the Constituent Assembly debates and that subsequent generations of scholars and advocates have developed.

The specific constitutional amendments most urgently needed include:

Amendment of Article 22, which permits preventive detention without the ordinary safeguards of criminal procedure, to require judicial authorization for any detention beyond forty-eight hours, including in cases of national security detention. The current constitutional framework allows parliament to authorize detention for up to three months without producing the detainee before a magistrate in certain security-related categories, a provision that has been systematically exploited through legislation like the UAPA and the PSA.

Amendment of Article 19 to replace the existing broad restriction grounds with a structured proportionality test, requiring that any restriction on fundamental freedoms be specifically prescribed by law, necessary and proportionate to achieve a compelling state interest, and subject to independent judicial review. The current grounds of restriction, particularly "public order" and "security of the state," are so broad as to permit almost any legislative or executive restriction, making the freedom guarantees far weaker than their text suggests.

Amendment of Article 124 and related provisions on judicial appointments to constitutionalize an independent appointments commission with defined criteria, diverse membership, and transparent procedures, while protecting judicial independence from executive control. The NJAC as struck down in 2015 gave the executive too much power; the current collegium system has too little transparency and too little diversity sensitivity. A reformed commission that is genuinely independent and genuinely merit-based is constitutionally and practically achievable.

Amendment to explicitly include justiciable social rights, including the right to food, the right to health, the right to housing, and the right to education (the last already exists under Article 21A), with a specific reasonableness standard and a progressive realization framework that creates enforceable obligations on the state rather than merely aspirational Directive Principles.

10.2 The Emergency Provisions: Restricting the Scope for Abuse

The emergency provisions in Part XVIII of the Constitution, Articles 352 through 360, have been analyzed throughout this textbook as mechanisms that have been systematically abused. While the explicit national emergency provision of Article 352 has not been invoked since 1975, the practical emergency powers maintained through the AFSPA, the PSA, and the UAPA create permanent quasi-emergency conditions in designated regions and categories.

Constitutional amendment of the emergency provisions should include: stronger procedural requirements for the declaration of national emergency, including mandatory approval by a supermajority of Parliament rather than the current simple majority of those present and voting; explicit constitutional prohibition of specific fundamental rights being suspended even during emergency, including the right to life and prohibition of torture; mandatory independent judicial review of the factual basis for emergency declarations; automatic sunset provisions requiring periodic parliamentary renewal of emergency declarations; and constitutional prohibition of the use of ordinary-law security legislation to create effective emergency conditions in specific regions outside the Article 352 framework.

The AFSPA is not a constitutional provision: it is an ordinary statute. Repeal of AFSPA, or its fundamental amendment to eliminate the prospective immunity provision, requires only parliamentary majority, not constitutional amendment. As documented earlier, the Law Commission has never recommended AFSPA in its current form, the Reddy Committee recommended its repeal, and multiple Supreme Court decisions have criticized its operation. The political obstacle is not constitutional but political: the military's resistance to accountability, the security establishment's insistence on operational immunity, and the BJP government's ideological resistance to accountability for security forces in conflict regions.

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10.3 The Ninth Schedule: Accountability Without Abrogation

The Ninth Schedule, which provides protection from fundamental rights challenges for a list of laws inserted by parliamentary act, was designed in 1951 to protect land reform legislation from the conservative Supreme Court of that era. It has since grown to include over 280 laws of very varied social character, many of which have nothing to do with land reform and whose protection from judicial review is constitutionally unjustifiable.

The Supreme Court's 2007 I.R. Coelho decision holds that Ninth Schedule laws inserted after April 24, 1973 (the date of the Kesavananda Bharati decision) can be reviewed for violations of the basic structure. This provides partial accountability for the most egregious Ninth Schedule laws. But the pre-1973 laws in the Schedule, including some that have been used to restrict rights in ways that would not survive constitutional scrutiny if applied today, remain insulated.

The reform agenda should include: a comprehensive audit of all Ninth Schedule laws against current constitutional rights standards; removal from the Schedule of laws that do not genuinely require protection from fundamental rights review for constitutionally legitimate purposes; and constitutional amendment to remove the blanket immunity from fundamental rights review for all laws, instead providing that certain legitimate and specifically identified land reform and social welfare legislation can be reviewed only under a specific test that takes account of the social purpose of the legislation.

CHAPTER ELEVEN: POLICE REFORM, CRIMINAL JUSTICE, AND THE RULE OF LAW

11.1 The Architecture of Police Accountability: What Reform Requires

The preceding analysis has consistently identified India's police as one of the primary institutional mechanisms of rights violation: through custodial torture, encounter killings, refusal to register FIRs, caste-biased enforcement, complicity in communal violence, and the suppression of political dissent. The political impossibility of police reform, analyzed in Part Ten, reflects the alignment of institutional incentives that makes politicians unwilling to implement reforms that would reduce their ability to use police for political purposes.

The theoretical framework for police reform draws on the work of David Bayley, one of the world's leading scholars of policing, particularly his comparative analysis of police systems in democratic societies. Bayley argues that democratic policing has three essential characteristics: it is accountable to law and society rather than to the government in power; it is protective of human rights by design and not merely by legal mandate; and it is subordinate to law rather than a parallel legal order. By all three of Bayley's criteria, Indian policing fails dramatically in many contexts.

The specific reform measures required are well established, having been recommended by the National Police Commission, the Prakash Singh judgment, and numerous expert committees

over decades. They include: separation of the police force from direct political control through tenure protection for senior officers and independent oversight boards; separation of investigation from law and order policing to reduce political interference in criminal investigations; establishment of independent police complaints authorities at state and district levels with genuine power to investigate complaints and impose disciplinary sanctions; training in human rights law and constitutional principles at all levels of the force; reform of recruitment to address the caste and communal biases in police composition; and implementation of body camera requirements and electronic oversight systems that create automatic documentation of police-citizen interactions.

The political reform agenda requires: restructuring police service rules to remove politicians from transfer and posting decisions; creating mandatory human rights audits of police operations with publicly reported results; and creating financial incentives for states that implement genuine accountability measures, through conditionality attached to central funding of state police forces.

11.2 Criminal Justice Reform: From Punishment to Justice

The criminal justice system in India, examined across the preceding parts for its role in producing injustice through custodial torture, UAPA misuse, bail denial, undertrial imprisonment, and the systematic disadvantaging of poor, Dalit, Muslim, and Adivasi accused persons, requires reform that is simultaneously structural and cultural.

The structural reforms include: comprehensive bail reform as discussed earlier; mandatory legal aid at all stages from arrest through trial for all persons who cannot afford private counsel; an independent Public Defender system with adequate funding and staffing; video recording of all police interrogations to prevent torture and fabricated confessions; mandatory production of accused persons before magistrates within twenty-four hours of arrest without exceptions; independent forensic laboratories insulated from police control, since the current practice of police-controlled forensic laboratories creates obvious incentive structures for the fabrication and manipulation of forensic evidence; and reform of the evidence law to exclude evidence obtained through torture or illegal search.

The cultural reforms, harder to mandate legislatively but no less important, include: judicial training on the presumption of innocence and the need for rigorous evidence review, rather than the current culture of deference to prosecution narratives; magistrate training on bail standards and the constitutional requirement of liberty as the default; prosecutor training on the duty to withdraw charges when evidence is clearly insufficient or fabricated; and police training on constitutional rights that goes beyond the current superficial instruction to include meaningful practical understanding of the consequences of violations.

The new criminal codes of 2023 to 2024, the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam, did not seize the opportunity for genuine criminal justice reform that their wholesale replacement of colonial-era codes represented. The changes were primarily cosmetic: renaming, rearranging, and adding some provisions, but failing to address the fundamental structural problems of police custody, bail,

undertrial imprisonment, legal aid, and the discrimination built into enforcement patterns. The reform opportunity that was squandered in 2023 to 2024 must be revisited.

11.3 The UAPA and Anti-Terror Law: A Reform Agenda

The reform of the Unlawful Activities Prevention Act is the single most important legislative reform in the immediate human rights agenda. The UAPA, as documented exhaustively in the preceding parts, has been used systematically to imprison human rights defenders, journalists, academics, students, and political activists without genuine security justification, creating a mechanism of indefinite pre-trial imprisonment that functions as punishment without conviction.

The minimum necessary reforms are: raising the bail standard from the effectively unconstitutional Watali framework to one that genuinely applies the presumption of innocence; reducing the maximum pre-trial detention period to ninety days maximum, with mandatory judicial review every thirty days on the full merits of continued detention; creating an independent judicial committee to review all existing designations of organizations and individuals as terrorist organizations, with the power to de-designate; removing the power to designate individuals (as opposed to organizations) as terrorists, which was introduced by the 2019 amendment and which allows executive branding without judicial determination; introducing a sunset provision requiring parliamentary renewal of the Act every five years; and adding a specific prohibition on using UAPA charges against persons engaged solely in peaceful advocacy, journalism, or academic research.

More fundamentally, the question of whether UAPA in any form is compatible with India's constitutional and international law obligations deserves serious examination. The UN Human Rights Committee has expressed concern about the law's breadth and its use against human rights defenders. The law's definition of "terrorist act" includes language so broad that peaceful protest, journalistic investigation, and academic criticism could fall within it depending on prosecutorial choices. The reform agenda should include a comprehensive constitutional review of whether UAPA can be brought into conformity with the rights guarantees of the Constitution or whether its fundamental design is incompatible with constitutional rights.

CHAPTER TWELVE: PHILOSOPHICAL SYNTHESIS: THE ETHICS OF REFORM AND THE DEMANDS OF JUSTICE

12.1 The Obligation to Reform: Moral Philosophy and Political Responsibility

The reform agenda developed across the preceding eleven chapters of this part raises a fundamental philosophical question: who bears the obligation to pursue it, and what is the nature of that obligation? The question is not merely academic. In the specific context of India's human rights situation, where the state is simultaneously the primary violator and the primary institutional mechanism through which reform must occur, the distribution of obligations for reform across the population, the political parties, the professional classes, the international community, and the state itself requires careful philosophical analysis.

The political philosophy of obligation in the context of systematic injustice has been developed most carefully by Iris Marion Young in her final work, Responsibility for Justice (2011), published posthumously. Young distinguishes between a "liability model" of responsibility, which assigns obligation only to those who have personally caused harm through their voluntary actions, and a "social connection model," which assigns political responsibility to all those who have participated in structural processes that produce injustice, even when they have not individually acted wrongly.

On Young's analysis, virtually every person who participates in Indian society bears some degree of political responsibility for the systematic rights violations documented in this textbook: the judge who denies bail in a UAPA case bears responsibility for the specific rights violation that results; the police officer who witnesses a mob attack on a Muslim family and fails to intervene bears responsibility for the harm that results; the journalist who reports government press releases uncritically while ignoring atrocities bears responsibility for the information environment that enables normalization; the voter who casts their vote for a party on the basis of Hindu nationalist appeals bears responsibility for the political empowerment of the forces that produce violations; and the professional who benefits from the caste system's distribution of advantage and makes no effort to challenge it bears responsibility for its continuation.

This assignment of political responsibility is not a claim that everyone is equally culpable: Young is clear that the liability model still applies to identify the primary responsibility of those who make specific choices to commit or enable violations. The political responsibility model supplements rather than replaces the liability model: it identifies the broader field of actors who bear obligations to work for structural change, even when they cannot be assigned individual causal responsibility for specific violations.

12.2 The Ethics of Compromise and the Demands of Principle

Any realistic reform agenda in the Indian context must engage with the ethics of compromise: the question of when accepting partial improvements is morally acceptable or even obligatory, and when accepting partial improvements involves complicity in ongoing violations by legitimizing a system that continues to produce them.

The tension between compromise and principle has been one of the central themes of political philosophy from Plato's philosopher-kings through Machiavelli's Prince to Weber's "politics as a vocation" to Rawls's later work on political liberalism. Applied to human rights reform in India, the tension is acute: should civil society organizations engage with the NHRC, despite its compromised independence, because the engagement provides some documentation value and some individual case relief? Should opposition politicians campaign on a platform that includes minority rights protection, even if this risks electoral backlash that returns the BJP to power? Should international organizations maintain dialogue with the Indian government, despite its systematic dismissal of their concerns, because dialogue maintains channels through which future pressure can be applied?

The pragmatic tradition in ethics, associated with John Dewey and developed in the human rights context by thinkers like Richard Rorty, argues that the demand for principled consistency in

political action ignores the moral significance of consequences: if engaging with a compromised system produces even small improvements in the lives of specific people who would otherwise suffer more, the engagement is justified even if it involves some degree of complicity with the system's legitimacy. The absolutist alternative, refusing any engagement that implies recognition of a fundamentally unjust system, is morally self-satisfying but practically useless.

But the pragmatic position has its own dangers, identified most clearly by the Brazilian educator and philosopher Paulo Freire in Pedagogy of the Oppressed: engagement with a system on its own terms, without challenging its fundamental premises, can become a form of what Freire calls "false generosity," a commitment to alleviating the symptoms of oppression without challenging its causes, which ultimately serves the interests of the oppressor by reducing the pressure for fundamental change.

The appropriate balance between compromise and principle in the Indian context depends critically on the specific domain and the specific institutional context. In the domain of individual case relief, engagement with compromised institutions is generally justified: even an inadequate NHRC, even a deferential court, even an ineffective human rights commission can sometimes provide relief to specific individuals that would otherwise be unavailable. In the domain of structural reform advocacy, the demand for principled clarity is more important: accepting the rhetorical framing of the ruling government, which presents systematic discrimination as security necessity and selective enforcement as rule of law, is a form of complicity that undermines the capacity to advocate for genuine change.

12.3 The International Dimension: Solidarity and Intervention

The international human rights community's relationship to India's human rights crisis involves its own ethical tensions. The principle of state sovereignty, which underpins the international order, limits the circumstances under which international actors can legitimately intervene in the domestic affairs of states. At the same time, the development of international human rights law since 1948 has progressively eroded the absolute character of sovereignty as a shield against external accountability demands.

The concept of the Responsibility to Protect (R2P), developed by the International Commission on Intervention and State Sovereignty in 2001 and adopted by the UN General Assembly in 2005, holds that state sovereignty is conditional on a state's fulfillment of its responsibility to protect its citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity. When a state fails this responsibility, the international community has the right, and in extreme cases the responsibility, to intervene to protect the affected population. India has rejected R2P as inconsistent with sovereignty principles, as have most major non-Western states, and has consistently voted against R2P-based resolutions in the Human Rights Council.

The application of R2P to India's situation is complex. While the scale and systematic character of violations against Muslims, Dalits, and Kashmiris are deeply concerning, the question of whether they reach the threshold of mass atrocity crimes that trigger R2P responsibility is contested. The concept of "atrocity prevention," which includes measures short of direct

intervention to reduce the risk of mass atrocity crimes, provides a more practically applicable framework for international engagement with India's situation.

The Global Centre for the Responsibility to Protect, in its October 2025 analysis of the UN Human Rights Council elections for 2026 to 2028, noted that India's election to the Council for the new term "raises questions about its commitment to genuine accountability." This critique identifies the fundamental tension in India's international human rights posture: claiming the legitimacy of a Human Rights Council seat while systematically blocking the accountability mechanisms that give the Council its meaning.

The solidarity of the international civil society community with Indian human rights organizations and defenders is both ethically obligatory and practically important. International human rights organizations including Amnesty International, Human Rights Watch, the International Federation for Human Rights, Front Line Defenders, and others provide documentation, advocacy, legal support, and protection to Indian civil society actors who face domestic repression. This international solidarity is a crucial component of the accountability architecture: it creates international reputational costs for India's government that create at least some degree of external pressure, and it provides resources and protection to Indian civil society actors who would otherwise be more completely vulnerable.

12.4 The Long Arc: Justice, Time, and the Imperative of Persistence

The philosopher Cornel West, writing in the tradition of prophetic pragmatism that draws on African-American liberation theology and John Dewey's democratic philosophy, argues that justice is not a destination but a practice: it is constituted not by its achievement but by the sustained commitment to its pursuit under conditions that make achievement uncertain. West draws on Martin Luther King's adaptation of the abolitionist Theodore Parker: "the arc of the moral universe is long, but it bends toward justice." The bending, in West's reading, is not automatic: it requires the sustained, collective, costly effort of those who choose the practice of justice over the comfort of accommodation.

Applied to India's human rights situation, West's framework demands a particular form of intellectual and moral courage: the refusal to allow the depth and persistence of the violations, or the current political impossibility of comprehensive reform, to become grounds for abandoning the commitment to accountability. The archive of documentation being built by civil society organizations, despite the FCRA and the UAPA and the physical violence; the jurisprudential legacy of judgments like Puttaswamy, Anuradha Bhasin, and the Association for Democratic Reforms electoral bonds decision; the persistent advocacy of human rights defenders who continue their work at personal cost; and the testimony of survivors who insist on their rights despite everything that has been done to deny them: all of these constitute the practice of justice in conditions that do not yet permit its achievement.

The comparative history of human rights accountability demonstrates that the long arc is real, if uncertain: South Africa's apartheid regime, which seemed impregnable in 1980, was gone within a decade; Argentina's generals, whose immunity seemed absolute in 1990, were eventually prosecuted; the British colonial system in India, which seemed permanent to many observers in

1940, was ended in 1947. The permanence of injustice is always an illusion; the question is not whether it will end but when and through what processes.

For India, the mechanisms through which accountability becomes possible are not yet fully formed. But they are being built: by the lawyers who file PIL petitions despite the political climate; by the journalists who report on violations despite the FIR threats; by the academics who produce documentation despite the UAPA risk; by the voters who denied the BJP its majority in 2024 despite the media environment; by the international organizations that maintain pressure despite India's diplomatic pushback; and by the philosophers, theorists, and legal scholars who insist on naming what is happening by its right names.

This textbook is itself an act of that insistence.

12.5 The Jurisprudence of Hope: From Critique to Transformation

The critical jurisprudence tradition, associated with the critical legal studies movement and its successors in feminist jurisprudence, critical race theory, and postcolonial legal theory, has been criticized for its devastating analytical power at the expense of constructive vision. If law is always already politics, and if constitutional rights are always already subject to the limitations of the power relations within which they operate, what space remains for transformative legal advocacy? Roberto Unger, one of the founders of critical legal studies, eventually came to regard the movement's negative critique as incomplete: effective transformation requires not merely the deconstruction of existing legal arrangements but the reconstruction of alternatives.

For the Indian human rights context, the jurisprudence of hope that Unger demands is neither naive nor uncritical: it holds simultaneously the recognition of the depth of the problem and the insistence on the possibility of change. It sees the Watali judgment's assault on the presumption of innocence and the Anuradha Bhasin judgment's protection of internet freedom, the FCRA strangulation of civil society and the Puttaswamy privacy revolution, the AFSPA's institutionalized impunity and the Supreme Court's direction to investigate every alleged extra-judicial killing, the bulldozer demolitions celebrated at BJP rallies and the Supreme Court's October 2024 prohibition of them.

The jurisprudence of hope does not pretend that the prohibitions are always enforced or that the rights guarantees are always vindicated. It holds that the articulation of the right, the legal insistence on its existence, its elaboration in jurisprudential doctrine, and its invocation in specific cases all contribute to the normative environment within which political change eventually becomes possible. The right to bail in UAPA cases, even when systematically denied, remains a claim that can be invoked, advocated for, and eventually enforced when political conditions change. The prohibition of caste discrimination, even when systematically evaded, creates a legal standard that generates political demands and moral pressure.

Amartya Sen's analysis of the role of public reasoning in the realization of justice, developed in The Idea of Justice (2009), provides the philosophical framework for this jurisprudence of hope. Sen argues, against the Rawlsian tradition that focuses on ideal theory and perfectly just institutions, that justice is constituted by comparative judgments about better and worse

arrangements, and that these comparative judgments are made through public reasoning, the open exchange of arguments and evidence in democratic public discourse. The documentation of violations, the articulation of rights claims, the comparison of India's practices with international standards, and the advocacy for specific reforms are all contributions to the public reasoning through which movement toward justice occurs.

This textbook has been, from its first pages, a contribution to that public reasoning. It is not neutral and does not pretend to be: it takes the side of the violated against the violators, the oppressed against the oppressors, the silenced against those who silence them. But its method has been the method of public reason: documented evidence, philosophical argument, legal analysis, comparative perspective, and the insistence that the most politically powerful responses to criticism, the claims of sovereignty, security, development, and national interest, must themselves be subject to the scrutiny of reason, evidence, and the moral standards of human dignity.

The arc of justice in India will bend not through the operation of historical forces outside human control but through the choices of specific people in specific situations: the judge who chooses principle over prudence, the journalist who publishes despite the threat, the politician who advocates for minority rights despite the electoral cost, the voter who chooses accountability over identity, the civil society activist who maintains documentation despite the UAPA risk, and the international community that maintains pressure despite the diplomatic inconvenience. Each of these choices is a small contribution to the bending of the arc.

The moral imperative of this textbook is to provide the intellectual resources, the analytical frameworks, the empirical documentation, and the philosophical vocabulary that make those choices more informed, more confident, and more effectively directed. If it has succeeded in that aim, even partially, it has justified its existence and honored the suffering of those whose experiences have provided its content.

CONCLUDING COMMENTARY ON PART ELEVEN

Part Eleven has traversed a long intellectual journey from the theoretical foundations of reform under conditions of democratic authoritarianism through the specific institutional mechanisms of judicial, electoral, civil society, international, comparative, transitional justice, economic, media, constitutional, and criminal justice reform, to a philosophical synthesis that situates the reform agenda within the broadest frameworks of moral and political theory.

The argument of Part Eleven can be summarized in five propositions. First, reform in India is necessary, demanded by the suffering of millions of people and by the gap between constitutional promise and governmental reality. Second, reform is possible, because the formal apparatus of constitutional democracy provides levers, however weakened, through which accountability can be forced, and because the history of democratic resilience in India and comparable countries demonstrates that popular pressure, civil society organization, and judicial commitment can produce significant change even under adverse political conditions. Third,

reform requires a multi-dimensional strategy that engages simultaneously with judicial reform, electoral reform, civil society building, international human rights mechanisms, economic transformation, media reform, constitutional amendment, and criminal justice reform, because the architecture of impunity is multi-dimensional and no single intervention is sufficient. Fourth, reform requires intellectual and moral honesty about both the depth of the problem and the uncertainty of the path to its solution, refusing both the false comfort of minimization and the false despair of fatalism. Fifth, the practice of reform, the sustained commitment to accountability under conditions that do not yet permit its full achievement, is itself a form of justice: it honors the dignity of the violated, maintains the possibility of future accountability, and constitutes the moral seriousness that the situation demands.

Part Twelve will examine the specific situation of women's rights in India, the intersection of gender, caste, religion, and class in the production of systematic violations against women, the legal framework for women's rights, and the reform agenda that genuine gender justice demands. It will engage with feminist legal theory, the sociology of gender-based violence, the political economy of patriarchy in the Indian context, and the specific legislative and constitutional provisions that affect the rights of women across different communities and contexts.

PART TWELVE: WOMEN, PATRIARCHY, AND THE ARCHITECTURE OF GENDER OPPRESSION

A Systematic Feminist, Jurisprudential, and Philosophical Analysis of the Legal, Constitutional, and Social Violations of Women's Rights in India

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PREFACE TO PART TWELVE

Part Eleven of this textbook closed with a promise and a commitment: the promise that the following part would turn its analytical gaze upon the specific situation of women in India, and the commitment that such analysis would be conducted with the same philosophical seriousness, the same evidentiary density, and the same refusal of comfortable diplomatic equivocation that has characterized the preceding eleven parts. This Part honors that commitment.

Women's rights in India occupy a paradoxical space that is, in many respects, more complex and more philosophically challenging than any other domain examined in this textbook. India worships goddesses. Its cosmology is saturated with feminine power, from the ferocious energy of Durga to the creative abundance of Lakshmi to the learned authority of Saraswati. Its classical literature celebrates women of extraordinary agency, courage, and intellectual depth. Its revolutionary history includes women who gave their lives for independence alongside men. Its contemporary public life includes women who have achieved the highest offices of state, including a female President, female Prime Ministers, female Chief Ministers, and female Supreme Court justices.

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And yet, according to the 2025 Global Gender Gap Index of the World Economic Forum, India ranked 131st out of 148 countries on measures of gender parity. It is one of the few countries in the world where marital rape remains explicitly legal, where the government has gone before its own Supreme Court to argue that criminalizing forced sex within marriage would be "excessively harsh" toward husbands. In August 2024, a thirty-one-year-old trainee doctor was raped and murdered in a hospital seminar room in Kolkata, her body discovered after a thirty-six-hour duty shift, and the national response, though intense, did not prevent 448,000 crimes against women being recorded by the National Crime Records Bureau in 2023 alone, a figure that represents only a fraction of the actual violations because of the systematic discouragement of reporting that characterizes every level of the criminal justice system.

The paradox is not accidental. It is a product of the particular way in which India's patriarchal structures have organized themselves: by placing women at the center of symbolic, ritual, and ideological space while systematically excluding them from legal, economic, physical, and political autonomy. The goddess is worshipped; the woman is controlled. The symbolic elevation of femininity serves the precise function of justifying the material subordination of actual women: if women are already elevated, honored, protected, and revered, why do they need rights?

This Part dissects that paradox. It does so through the lenses of feminist jurisprudence, critical legal theory, postcolonial feminist philosophy, the sociology of gender-based violence, political economy, and the detailed examination of specific laws, cases, doctrines, and incidents that constitute the architecture of gender oppression in India. It engages with the latest theoretical developments in feminist legal scholarship, with the specific jurisprudential controversies that have defined the period from 2024 to 2026, and with the most recent documentation of violations from human rights organizations, government crime statistics, and survivor testimonies.

The analytical framework of Part Twelve draws particularly on the traditions of South Asian feminist scholarship: on the work of Nivedita Menon, Flavia Agnes, Ratna Kapur, Indira Jaising, Upendra Baxi's engagements with feminist legal theory, the documentarians of the National Family Health Survey, and the activists of organizations like Majlis Manch, Jagori, and the All India Democratic Women's Association. These voices are situated within the international feminist jurisprudential tradition that stretches from Simone de Beauvoir through Catharine MacKinnon and Carol Gilligan to Martha Fineman, Martha Nussbaum, and the contemporary scholarship that engages simultaneously with decolonization theory and gender justice.

A specific methodological commitment is necessary at the outset. The analysis that follows will not treat "Indian women" as a monolithic category. The most significant analytical contribution of the past three decades of feminist scholarship has been the development of intersectionality as a theoretical and methodological framework, the recognition that gender oppression does not operate in isolation from caste, class, religion, ethnicity, disability, sexuality, and other axes of identity and power. Kimberle Crenshaw's foundational articulation of intersectionality, developed in the context of Black women's experience in the United States, translates with extraordinary power into the Indian context, where the intersection of gender with caste produces forms of oppression that are qualitatively different from, and in many respects more severe than, the sum of their parts.

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The Dalit woman in rural Rajasthan who is gang-raped by upper-caste men and whose complaint is dismissed by police, only to be followed by the burning of her family's hut and the social ostracism of her community, does not experience "gender oppression" and "caste oppression" as separate events. She experiences a single, compound, indivisible assault that is simultaneously about her gender, her caste, her class, her geography, and her political powerlessness. Any analysis that separates these dimensions into discrete analytical categories in order to address them individually through discrete legal instruments necessarily distorts the reality of her experience.

This Part maintains intersectionality as its central methodological principle. It does not merely treat women's rights as one category among many: it explores the specific ways in which gender oppression is constituted through and intensified by its intersections with caste, religion, class, and location across Indian society.

CHAPTER ONE: FEMINIST JURISPRUDENCE AND THE CRITIQUE OF PATRIARCHAL LAW

1.1 The Theoretical Foundation: What Feminist Jurisprudence Asks

Feminist jurisprudence is not simply the study of laws that affect women. It is a comprehensive rethinking of the theoretical foundations of law itself, a challenge to the claim that law is or can be neutral, objective, and universal from a position that has historically been occupied by men of specific classes, castes, and social positions. The question that feminist jurisprudence asks, in the formulation of Catharine MacKinnon, is not merely whether women are treated equally under the law, but whether the law's concept of equality, the standard by which equality is measured, is itself constructed from a male-centered perspective that systematically disadvantages women.

MacKinnon's critique of formal equality is foundational to understanding the limitations of India's constitutional framework for women's rights. The equality guarantees in Articles 14 and 15 of the Indian Constitution are articulated in terms of formal non-discrimination: the state shall not discriminate on the basis of sex; all persons shall be equal before the law. But formal equality in a substantively unequal society does not produce substantive equality: it produces the pretense of equality while the underlying inequalities remain intact.

A woman who has been raped has, in formal terms, equal access to the criminal justice system. She can file a complaint, engage a lawyer, present her case before a court. But if the police officer who takes her complaint is from a caste that views lower-caste women as sexually available, and if the medical examination is conducted by a doctor who applies the "two-finger test" to assess her "habituatedness" to sexual intercourse, and if the prosecuting lawyer lacks training in the psychology of trauma and fails to challenge defense questioning that focuses on her sexual history, and if the judge applies a standard of "consent" that does not account for the power differentials between the accused and the victim, then formal equality of access has produced substantive inequality of outcome.

MacKinnon's further argument, that law is not merely neutral as between men and women but is actively constructed from the male point of view, finds substantial support in the specific context of Indian legal history. The Indian Penal Code of 1860 was drafted by Thomas Macaulay and his colleagues, none of whom were women and all of whom operated from within a Victorian conception of women's nature, role, and legal status that explicitly treated women as objects of protection, property, and control rather than as autonomous legal subjects. The specific provisions of the IPC that related to women, on rape, adultery, outraging modesty, kidnapping for marriage or seduction, and related offenses, were all formulated from the perspective of the male interest in controlling women's sexual behavior and reproductive capacity.

This colonial male-centered legal perspective was not replaced at independence. The Indian Constitution's framers were predominantly male. The Constituent Assembly, while it included some extraordinary women including Sucheta Kripalani, Amrit Kaur, Durgabai Deshmukh, and Hansa Mehta, was overwhelmingly male in composition and male-dominated in its deliberations. The male-centric framework of the IPC was retained. The personal laws governing marriage, divorce, inheritance, and guardianship, which are the legal domains of most direct and daily relevance to the lives of Indian women, were left largely intact across religious communities and were not subjected to the uniform civil code reform that Ambedkar sought but could not achieve.

Ruth Bader Ginsburg, whose career as a feminist litigator and Supreme Court justice transformed the understanding of gender equality in American constitutional law, argued that sex-based classifications in law rest on the same kind of stereotyping and prejudice that underlies race-based classifications. The Indian Supreme Court has adopted elements of this analysis: in cases like Naz Foundation and the constitutional morality doctrine, the Court has moved toward a jurisprudence of substantive equality that challenges stereotyping. But the application of this jurisprudence to the specific domains of gender inequality in India has been uneven, inconsistent, and frequently undermined by the same cultural assumptions that the jurisprudence is supposed to challenge.

Sandra Harding's distinction between "feminist empiricism," which accepts the goals of traditional science but argues that better attention to women's experiences produces better science, and "standpoint epistemology," which argues that knowledge produced from the standpoint of the marginalized is more complete and less distorted than knowledge produced from dominant positions, provides the methodological framework for the analysis that follows. The analysis begins from the standpoint of women who have borne the weight of India's patriarchal legal and social order, and it uses their experiences as the primary evidence against which the adequacy of legal frameworks and institutional responses is evaluated.

1.2 The Three Faces of Feminist Legal Theory in the Indian Context

Contemporary feminist legal theory in India can be understood through three broad theoretical tendencies, each of which illuminates different dimensions of the problem and each of which has different implications for the reform agenda.

The first tendency, associated with the liberal feminist tradition and with organizations like the Lawyers Collective, emphasizes equality of formal rights, access to legal remedies, and the

enforcement of anti-discrimination principles already present in the constitutional framework. This approach has achieved significant results: the Vishaka guidelines on workplace sexual harassment, subsequently replaced by the POSH Act; the amendments to rape law following the Nirbhaya case; the recognition of women's right to live in the matrimonial home under the Protection of Women from Domestic Violence Act; and the Supreme Court's recognition of women's reproductive rights in various contexts. The liberal feminist approach works within the existing legal framework and seeks its fuller and more consistent application to the benefit of women.

The second tendency, associated with the socialist feminist and Marxist feminist traditions and represented by organizations like the National Federation of Indian Women and the All India Democratic Women's Association, emphasizes the material conditions that underlie gender oppression: the economic dependence of women on male family members, the appropriation of women's unpaid labor in the household, the concentration of land and property in male hands, and the class dimensions of gender violence. This tradition argues that legal reform is insufficient without economic transformation: that the right to property means nothing to a woman who has been systematically excluded from ownership; that the right to file a rape complaint means nothing to a woman who is economically dependent on the family of her rapist; that formal equality of employment opportunity means nothing to a woman who bears the entire burden of domestic labor and childcare without social support or economic recognition.

The third tendency, increasingly influential in contemporary scholarship, is the postcolonial feminist tradition associated with scholars like Ratna Kapur, Srimati Basu, Purnima Mankekar, and, internationally, Chandra Mohanty and Gayatri Chakravorty Spivak. This tradition is critical not only of Indian patriarchy but also of the dominant international human rights framework that is sometimes deployed in critiques of Indian gender practices. Mohanty's concept of the "third world woman" as a discursive construction in Western feminist literature, a monolithic, victimized, and passive figure that exists as the negative counterpart of the liberated Western woman, is an important caution against forms of gender rights advocacy that reproduce colonial hierarchies of knowledge and value.

The postcolonial feminist critique identifies specific ways in which the international human rights framework, as applied to India, has been deployed in ways that are more about Western cultural and political interests than about the actual experiences and interests of Indian women. The controversy over the "sati" prohibition debate in the 1980s and 1990s, the "personal law" debate in which calls for a Uniform Civil Code have been used by Hindu nationalist forces to attack Muslim personal law while leaving Hindu personal law largely unchanged, and the way in which specific practices like the wearing of the hijab have become flashpoints in international feminist discourse, all illustrate the danger of applying decontextualized universal standards to the specific social and cultural realities of Indian women's lives.

This textbook navigates among these three theoretical tendencies. It takes from the liberal feminist tradition the insistence that legal rights matter and that their consistent application and enforcement are genuine human rights obligations. It takes from the socialist feminist tradition the insistence that economic transformation is inseparable from gender justice. And it takes from

the postcolonial feminist tradition the insistence on complexity, context, and the voices of women themselves as the primary evidence of what justice requires.

1.3 Robin West, Carol Gilligan, and the Ethics of Care in the Indian Context

Carol Gilligan's landmark 1982 work "In a Different Voice" argued that women characteristically reason about moral questions in terms of relationships, responsibilities, and context rather than in terms of abstract rights and impartial rules. This "ethics of care," Gilligan argued, had been systematically devalued in moral philosophy and in law, which privileged the "ethics of justice" associated with male moral development in Lawrence Kohlberg's influential schema.

Gilligan's work has been extensively debated and extensively applied in feminist legal theory. Robin West, developing Gilligan's insights into legal scholarship, argued in her influential paper "Jurisprudence and Gender" that the dominant theoretical paradigms of law, both liberal and critical, are based on assumptions about human nature that are characteristically male: the assumption of the autonomous, bounded, self-interested individual who enters social relations by choice and who values rights as protections against intrusion. Women's experience, West argued, is characteristically different: characterized by connection, interdependence, vulnerability, and care that the dominant legal frameworks systematically fail to recognize or protect.

When West's analysis is applied to the Indian context, it illuminates specific features of India's legal framework that systematically disadvantage women. The legal concept of the autonomous individual who holds rights against the state and against other individuals maps poorly onto the situation of Indian women, whose social existence is characteristically structured through family, kinship, community, and dependency relationships that both sustain and constrain them. A woman in an abusive marriage who cannot leave because she has no economic resources, no safe place to go, no independent legal identity for purposes of property ownership, and no family support because her family's honor is invested in the continuation of the marriage, does not need rights articulated as protections of individual autonomy. She needs a transformation of the relational structure within which she is trapped.

Martha Fineman's vulnerability theory, introduced in Part One of this textbook in a different context, is particularly important here. Fineman argues that vulnerability, the universal human capacity to be harmed, is managed through the accumulation of "assets": physical, human, social, and institutional resources that allow individuals to respond to and recover from harm. The distribution of these assets is fundamentally unequal in India along gender lines, and this inequality is not incidental to the legal system but is produced and reproduced through it.

The legal system produces women's vulnerability in multiple specific ways. The failure to enforce women's inheritance rights under the Hindu Succession Act ensures that women enter marriage without independent economic assets. The failure to enforce the Dowry Prohibition Act ensures that women's families must transfer significant resources to the groom's family at marriage, reducing family resources available to women and creating the economic logic of dowry-related violence. The failure to enforce the Protection of Women from Domestic Violence Act ensures that women who are being abused in marriage do not have the institutional support

that would allow them to leave. The failure to enforce the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in cases involving Dalit women means that Dalit women cannot accumulate the institutional asset of legal protection. The POSH Act's inadequate implementation means that women who report workplace sexual harassment face career destruction rather than legal protection. At every point, the law's failure to build resilience for women translates into the specific vulnerability that enables ongoing violation.

1.4 Upendra Baxi and the Feminist Critique of Indian Rights Discourse

Upendra Baxi's decades of engagement with feminist legal theory in the Indian context provides the most sophisticated home-grown framework for understanding gender and law in India. Baxi has argued, consistently and powerfully, that the dominant human rights discourse, both domestic and international, systematically privileges civil and political rights, which are the rights most relevant to the public sphere of political participation, and systematically subordinates the social, economic, and cultural rights that are most relevant to the lives of the most marginalized women.

Baxi's concept of "suffering" as the starting point of rights analysis, discussed in Part One, is particularly important in the gender context. Women's suffering in India takes specific forms: the suffering of the girl child who is never born because sex-selective abortion ends her existence before it begins; the suffering of the girl child who is born but systematically fed less, educated less, and valued less than her brothers; the suffering of the young woman who is married before she is legally or emotionally ready, to a man chosen by her family, with resources transferred from her family to his; the suffering of the wife who is beaten by her husband and told by police officers that domestic violence is a private family matter; the suffering of the rape survivor who is subjected to re-violation through the criminal justice process; and the suffering of the older woman who is dispossessed of the property she helped create through decades of labor.

This catalogue of suffering is the empirical foundation of the legal and philosophical analysis that follows. It is not a rhetorical device designed to produce emotional responses: it is the evidentiary basis for the claim that India's legal system, as it actually operates in the lives of women, constitutes a systematic human rights violation of a scale and depth that demands comprehensive and urgent response.

CHAPTER TWO: CONSTITUTIONAL ARCHITECTURE OF WOMEN'S RIGHTS: PROMISES, GAPS, AND JURISPRUDENTIAL EVOLUTION

2.1 The Constitutional Framework: An Assessment

The Indian Constitution provides a more comprehensive formal framework for women's rights than many of its contemporary constitutional documents. Article 15(3) explicitly authorizes the state to make special provisions for women and children, enabling affirmative action for gender equality. Article 16(2) prohibits discrimination in public employment on the basis of sex. Article 39 of the Directive Principles includes provisions for equal pay for equal work, adequate means

of livelihood for women, and protection of the health and strength of workers, particularly women and children. Article 42 provides for just and humane conditions of work and maternity relief. Article 51A(e), inserted by the Forty-Second Amendment of 1976, makes it a fundamental duty of every citizen to renounce practices derogatory to the dignity of women.

The Supreme Court has built on these provisions through creative interpretation to develop a substantial body of gender rights jurisprudence. The Vishaka judgment of 1997, in which the Court laid down binding guidelines on sexual harassment at the workplace in the absence of legislation, drew on the constitutional guarantees of equality and the right to life and personal liberty, as well as on CEDAW, to recognize sexual harassment as a violation of fundamental rights. The landmark cases that developed the right to health under Article 21 have specifically addressed maternal mortality, reproductive health, and the rights of women in healthcare settings. The Navtej Singh Johar judgment of 2018, which decriminalized consensual same-sex relations under Section 377 of the IPC, advanced a conception of constitutional morality that explicitly challenged prevailing social norms and used the right to dignity under Article 21 as a foundation for expanding the rights of LGBTQ+ persons, including women in same-sex relationships.

The 2017 judgment in Justice K.S. Puttaswamy v. Union of India, which established privacy as a fundamental right under Article 21, has particular significance for women's rights. The judgment's extensive discussion of decisional autonomy, bodily integrity, and the right to make intimate choices, combined with its explicit recognition that the right to privacy includes the right to control one's own body and reproductive choices, provides a constitutional foundation for challenging the marital rape exception, anti-abortion restrictions, forced sterilizations, and the various forms of control exercised over women's bodies through law and social norm.

But the constitutional framework has significant structural limitations from a gender justice perspective.

The first limitation is the non-justiciability of the Directive Principles that contain the most substantive social and economic rights relevant to women. As noted in the analysis of Part One, the Directive Principles cannot be enforced in courts. The guarantee of equal pay for equal work, the protection of maternity rights, the provision of just conditions of work, the mandate for adequate means of livelihood: these remain aspirational standards rather than enforceable rights. The Supreme Court has partially remedied this by reading social rights into Article 21, but judicial creativity cannot substitute for legislative enforcement in the comprehensive way that these provisions require.

The second limitation is the constitutional protection of personal laws. The Constitution's provisions on religious freedom, combined with the political failure to enact a Uniform Civil Code as mandated by Article 44 of the Directive Principles, have allowed the continuation of gender-discriminatory personal laws across religious communities. Hindu personal law, Muslim personal law, and Christian personal law all contain provisions that treat women unequally relative to men in matters of marriage, divorce, maintenance, inheritance, and guardianship. The Supreme Court's 2017 ruling in Shayara Bano that the practice of instant triple talaq violated

Muslim women's right to equality and dignity was an important step. But the broader framework of personal law discrimination remains intact.

The third limitation is the continued operation of gender-discriminatory provisions in apparently neutral laws. The Bharatiya Nyaya Sanhita, which replaced the IPC in 2023, retained the marital rape exception. It retained provisions that treat women as objects of protection rather than as rights-bearing subjects. It retained provisions that criminalize consensual adult behavior in ways that disproportionately affect women. The colonial patriarchal framework of the original IPC was not dismantled but largely reproduced with new numbering and some additional provisions.

2.2 The CEDAW Framework and India's Obligations

The Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the UN General Assembly in 1979 and often described as the international bill of rights for women, is one of the most widely ratified human rights treaties in the world. India ratified CEDAW in 1993, but with declarations and reservations that significantly limit its operative scope.

India's ratification came with specific reservations on articles 5(a) and 16(1), which concern the modification of social and cultural patterns that perpetuate gender inequality and the guarantee of equal rights in marriage, family, and divorce. India's reservations on these articles reflect the political compromise that was necessary to achieve ratification: the government was unwilling to commit to abolishing personal law practices that treat women unequally in marriage and family because of the political opposition from religious communities. The reservation on 16(1) is particularly damaging because it insulates the most pervasive forms of gender discrimination, those that occur within the family and marriage, from CEDAW's requirements.

The CEDAW Committee, which monitors state compliance with the Convention, reviewed India's compliance in 2014 and issued extensive concluding observations that remain largely unrealized. The Committee called on India to expedite the review of reservations, strengthen implementation of laws against violence against women, address impunity for crimes against Dalit women, improve women's political participation, and enact a Uniform Civil Code. None of these recommendations has been comprehensively implemented.

CEDAW's foundational concept of discrimination is broader than the equality concept in the Indian Constitution. Article 1 of CEDAW defines discrimination against women as any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women of human rights in any field. The phrase "effect or purpose" is crucial: it means that formally neutral laws or practices that have a discriminatory effect on women count as discrimination under CEDAW even if they do not explicitly discriminate on the basis of sex. This disparate impact standard is more demanding than the formal equality standard that dominates Indian constitutional jurisprudence, and its consistent application would require the challenging of a much wider range of laws and practices than India's current framework addresses.

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The CEDAW Committee's General Recommendation No. 35 of 2017 on gender-based violence against women, which updated and expanded the earlier General Recommendation No. 19 of 1992, provides the most comprehensive international framework for analyzing state obligations with respect to gender-based violence. The Committee holds that gender-based violence against women is a form of discrimination and therefore a violation of CEDAW in and of itself. It holds that states have obligations not only to refrain from violence but to take effective measures to prevent, investigate, prosecute, and punish violence by private actors. And it holds that impunity for gender-based violence, whether created through laws, policies, or practices, constitutes a violation of CEDAW.

India's compliance with this framework is deeply inadequate across virtually every dimension, as the following chapters demonstrate in detail.

2.3 The Personal Law Problem: Gender Justice and Religious Pluralism

The personal law system is the most complex and politically charged dimension of women's rights in India. The system allows different religious communities to be governed by their own customary or religious law in matters of marriage, divorce, maintenance, succession, and related family law issues. Hindu personal law applies to Hindus, Jains, Sikhs, and Buddhists. Muslim personal law applies to Muslims. Christian personal law applies to Christians. Parsi personal law applies to Parsis.

All of these personal law systems contain provisions that discriminate against women relative to men, though the nature and severity of the discrimination varies. Hindu personal law, as codified in the Hindu Marriage Act of 1955, the Hindu Succession Act of 1956 as amended in 2005, and related legislation, has been progressively reformed through legislative amendment, but discriminatory provisions remain. Muslim personal law, governed partly by legislation and partly by uncodified custom, contains significant gender inequalities in divorce, polygamy, and inheritance. Christian personal law, governed primarily by the Indian Divorce Act of 1869 as amended, has been reformed but still contains some discriminatory provisions. The Parsi personal law system contains specific gender provisions that are not fully consistent with constitutional equality principles.

The demand for a Uniform Civil Code, mandated by Article 44 of the Directive Principles and long advocated by women's organizations, has been politically complicated by its adoption as a central demand of the Hindu nationalist movement. The BJP and RSS have advocated for a Uniform Civil Code not primarily in the interest of women's equality but as a mechanism for imposing a Hindu-majoritarian framework on personal law, effectively eliminating the legal distinctiveness of Muslim community practice. This political context has led many women's organizations and feminist scholars to oppose the Uniform Civil Code demand as it has been formulated by the Hindu nationalist movement, even while strongly advocating for the reform of discriminatory personal law provisions in all communities.

The tension between religious freedom and gender equality is a genuine philosophical dilemma, not merely a political one. Martha Nussbaum's engagement with this tension in her work on sex and social justice argues that genuine respect for religious communities requires taking seriously

the voices of women within those communities, and that women's religious self-understanding, when fully informed and freely expressed, should be the starting point for any reform agenda. On this account, the reform of personal law requires not the imposition of an external standard but the empowerment of women within religious communities to shape the legal framework that governs their lives.

Ratna Kapur's more skeptical analysis, in her work on gender, sexuality, and law in India, warns against what she calls the "victim narrative" of feminist legal reform: the tendency to present all women of religious minority communities as passive victims of their communities' practices, which reproduces the colonial logic of saving brown women from brown men. Kapur argues that genuine respect for women's agency requires engaging with the full complexity of their social and religious lives, including the ways in which women find meaning, solidarity, and identity within religious communities even when those communities impose constraints.

This textbook steers between these positions: it insists on the right of every woman to equal protection of law and to bodily autonomy and dignity without exception, while also insisting that the reform agenda must be shaped by the voices of women from the affected communities rather than by majoritarian political forces using women's rights as a pretext for communal domination.

2.4 The Constitutional Morality Doctrine and Gender

The concept of "constitutional morality," which Justice D.Y. Chandrachud developed most extensively in his concurring opinion in Navtej Singh Johar v. Union of India, has the potential to transform the constitutional framework for gender rights in India. Constitutional morality, as Chandrachud articulated it, requires judges and legislators to apply the values embedded in the constitutional text, particularly equality, dignity, and liberty, rather than the prevailing social morality of the majority. Where social morality discriminates, constitutional morality demands equality.

Applied to gender, constitutional morality requires the rejection of laws and practices that rest on the social morality of patriarchal tradition rather than on the constitutional values of equality and dignity. The marital rape exception rests on the social morality of marriage as a woman's permanent consent to sexual availability; constitutional morality, consistently applied, would strike it down. The two-finger test for assessing rape victims rests on the social morality that treats sexually experienced women as less credible and less violated; constitutional morality, consistently applied, would prohibit it, as the Supreme Court has done but without consistent implementation. The practice of courts asking rape victims about their sexual history rests on the social morality that treats women's sexual history as relevant to their right to protection from rape; constitutional morality, consistently applied, would prohibit it entirely.

The problem is that constitutional morality as a doctrine is only as powerful as the judges who apply it. The same Supreme Court that articulated constitutional morality in Navtej Singh Johar accepted the government's argument in the marital rape case without immediately striking down the exception, and deferred to Parliament in the face of explicit constitutional arguments about women's equality and dignity. The gap between the doctrine's potential and its actual application is a function of the same cultural patriarchalism that the doctrine is supposed to challenge: the

judges who must apply constitutional morality are themselves products of a profoundly patriarchal culture and legal tradition.

CHAPTER THREE: SEXUAL VIOLENCE, RAPE LAW, AND THE STRUCTURAL FAILURE OF JUSTICE

3.1 The Scale of the Crisis: Data, Underreporting, and the Epistemology of Rape Statistics

The National Crime Records Bureau reported 31,516 cases of rape in India in 2024. Four hundred forty-eight thousand two hundred eleven total crimes against women were recorded in 2023. These figures are massive in absolute terms. They are also, almost certainly, a small fraction of the actual incidence of violence, because the structural barriers to reporting rape and other crimes against women in India are extensive and well-documented.

The barriers to reporting operate at every level. At the community level, rape is characterized in patriarchal Indian culture as a violation of the woman's and her family's honor rather than as a crime committed by the perpetrator. This framing means that reporting rape exposes the victim and her family to social ostracism rather than receiving social support. Young women, particularly those who are unmarried, fear that reporting rape will destroy their marriage prospects. Married women fear that reporting rape will lead to marital breakdown, economic destitution, and loss of their children. Women from Dalit and other socially marginalized communities face the additional deterrent of the near certainty that their complaints will not be taken seriously by police officers from dominant castes.

At the institutional level, the barriers to reporting are enforced by a police force that is deeply hostile to rape complainants. The persistent illegal practice of the "two-finger test," which involves a vaginal examination purportedly to assess whether a woman is "habituated" to sexual intercourse and is therefore less credible as a rape victim, was declared unconstitutional and prohibited by the Supreme Court in the Lillu v. State of Haryana judgment of 2013 and reaffirmed in State of Jharkhand v. Shailendra Kumar Rai in November 2022. Yet the practice continued in documented cases years after these prohibitions. The institutional persistence of this practice is a measure of the depth of institutional patriarchalism in India's medical and police systems.

Police officers in multiple documented cases have refused to register FIRs for rape, suggesting to complainants that they are mistaken, that the assault was consensual, or that filing a complaint will embarrass the family. When FIRs are registered, the investigation is often perfunctory or actively hostile to the complainant. Evidence is mishandled, witness statements are taken carelessly or not at all, and medical examinations are delayed to a point where physical evidence is compromised.

The 2024 Kolkata case brought these institutional failures into unusually sharp public focus. A thirty-one-year-old postgraduate trainee doctor at R.G. Kar Medical College and Hospital was raped and murdered in the seminar room of the hospital on August 9, 2024, after a thirty-six-hour

duty shift. The brutality of the crime, the institutional failures that preceded and followed it, the evidence that the hospital's administration attempted to minimize and suppress the crime, and the subsequent vandalism of the hospital's emergency ward by a mob that some witnesses identified as connected to the ruling Trinamool Congress, created a national crisis that brought doctors, students, and civil society onto the streets in unprecedented numbers.

The Supreme Court took suo motu cognizance of the case on August 18, 2024 and constituted a nine-member National Task Force to develop a protocol for the safety of medical professionals in healthcare settings. The Court's intervention was significant and its direction to develop systematic protections for women working in healthcare was important. But the specific facts of the R.G. Kar case also illustrated the deeper structural problem: the victim was not a marginalized woman without institutional protection; she was a doctor, an educated professional in a prominent public institution, working in a facility with extensive administrative presence. If a woman with her level of institutional embeddedness could be raped and murdered in her own workplace without institutional protection or immediate accountability, what does this say about the safety of the hundreds of millions of Indian women without any institutional protection at all?

The rape and murder of the thirty-one-year-old doctor cast a spotlight on how millions of Indian women remain exposed to abuse in the workplace and continue to face severe barriers to justice for sexual violence. Human Rights Watch

3.2 The Rape Law Framework: Reform, Gaps, and the Nirbhaya Legacy

The history of rape law reform in India is a history of catalytic events producing legislative responses that are necessary but insufficient. The 1983 amendments to rape law were prompted by the Mathura case, in which the Supreme Court's acquittal of police officers who had raped a sixteen-year-old tribal girl in a police station on the basis that she had not "resisted" sufficiently provoked an open letter from four law professors, followed by a national women's movement campaign that produced legislative changes expanding the definition of rape and creating a presumption of non-consent in cases of custodial rape.

The 2013 Criminal Law (Amendment) Act, known popularly as the Nirbhaya Act after the Delhi gang rape case of December 2012 that prompted it, represented the most comprehensive reform of India's rape law. The Nirbhaya case, in which a twenty-three-year-old physiotherapy student was gang-raped and fatally assaulted on a Delhi bus, produced an extraordinary public outrage that included some of the largest protests in India's post-independence history. The Justice J.S. Verma Committee, appointed in the aftermath, produced an extraordinarily comprehensive and progressive report in January 2013 that recommended the criminalization of marital rape, expanded the definition of sexual assault, addressed police accountability, and developed a comprehensive framework for gender justice that went far beyond the immediate question of rape law.

The Nirbhaya Act implemented many but not all of the Justice Verma Committee's recommendations. Most significantly, it did not implement the recommendation to criminalize marital rape. The definition of rape was expanded to include penetration with objects and oral

sex. The punishment for gang rape and repeat offenders was enhanced. A new offense of "acid attack" was created. The age of consent was maintained at eighteen. A specific offense of "stalking" was created. The Act also created a Nirbhaya Fund of one thousand crore rupees for the implementation of initiatives to ensure women's security.

The Bharatiya Nyaya Sanhita of 2023, which replaced the IPC, retained all of the 2013 reforms but again did not criminalize marital rape, maintaining the colonial-era exception with the age adjusted from fifteen to eighteen. This was not an oversight: it was a conscious legislative choice that the government defended, including before the Supreme Court in October 2024 when it filed a 49-page affidavit arguing that criminalizing marital rape would be "excessively harsh." The government argued that criminalizing marital rape would be "excessively harsh and therefore disproportionate," a position that advocates for criminalization described as a "step back" for women living in a deeply patriarchal society where sexual violence is rampant. CNN

The retention of the marital rape exception is not merely a legislative gap: it is a philosophical statement about the status of married women in India's legal order. It says that married women are not full subjects of the criminal law's protection in the domain of sexual violence. It says that marriage is a permanent grant of consent to sexual access by the husband. It says that the bodily autonomy and sexual integrity that every other woman in India possesses is lost upon marriage. This is a statement that is constitutionally, philosophically, and morally indefensible, and its continuation in a legal system that claims to be committed to gender equality and constitutional morality is an indictment of the political will of successive Indian governments.

3.3 The Two-Finger Test, Rape Mythology, and Judicial Sexism

The persistence of "rape mythology" in India's legal system, which refers to a set of culturally pervasive but empirically false beliefs about rape and rape victims, is one of the most serious obstacles to justice for survivors. Rape mythology includes beliefs such as: that real rape victims always resist and that absence of resistance implies consent; that women who have had consensual sex previously are less credible as rape victims; that women who are out at night or who dress in particular ways invite assault; that rape reports are frequently false; and that rape by an acquaintance or intimate partner is less serious than rape by a stranger.

These myths are scientifically and empirically false. They are not supported by criminological research, psychological research, or the testimony of survivors. And yet they permeate the culture, the police force, the prosecution service, and the judiciary in India in ways that consistently and systematically disadvantage rape survivors in the legal process.

The judiciary's own sexism is documented in specific cases. In a September 2020 judgment, the Madhya Pradesh High Court ordered a man charged with sexual assault to seek a "compromise" with the victim, suggesting the accused could "tie a rakhi" to the victim to symbolize a brother-sister relationship as a condition of bail, a framing that treats the crime as a relational disruption rather than a physical violation. In multiple other cases, judges have made observations suggesting that women who go out late, who consume alcohol, who have male friends, or who are "habituated to sex" are less credible as rape victims or partly responsible for their own assault.

The Supreme Court itself has not been immune. In a 2021 bail judgment, a justice of the Supreme Court observed that the accused and the complainant could enter into a compromise in a rape case, an observation that fundamentally misunderstands rape as a crime against a person rather than as a civil wrong that can be resolved through negotiation. The Court later retracted this observation following widespread criticism, but the fact that it was made at all by a justice of the highest court in the country illustrates the depth of rape mythology's penetration into the judicial culture.

The NCRB data that shows a conviction rate for rape consistently below 30 percent must be read against this background of pervasive rape mythology. Low conviction rates do not necessarily mean that many rape complaints are false: they may mean that the criminal justice system, in its application of evidence standards, bail practice, witness management, and sentencing, is systematically disadvantaging rape complainants rather than operating as a neutral adjudicator.

The comparative perspective is instructive. The UK's conviction rate for rape is similarly low, which led to a comprehensive review by the Crown Prosecution Service and major reforms in how rape cases are investigated, prosecuted, and tried. Sweden's extensive research on rape prosecution has led to significant legislative and procedural reforms. India has not conducted a comparable systematic review of why conviction rates are low, relying instead on the narrative that false complaints are common. The available evidence does not support this narrative: the proportion of "false rape complaints" identified in research studies is consistently small, typically in the range of two to eight percent, and is comparable to false complaint rates for other crimes. The systematic privileging of the false complaint narrative over the systematic underreporting narrative is itself an expression of rape mythology.

3.4 The RG Kar Case: Institutional Failure and the Demand for Systemic Reform

The R.G. Kar Medical College case deserves extended analysis not because it is unique, which it is not, but because the institutional response to it illuminates with unusual clarity the multiple levels of failure that characterize India's response to gender-based violence in institutional settings.

The immediate facts are these. On August 9, 2024, a resident doctor was found raped and murdered in the seminar hall of RG Kar Medical College. She had been on a continuous duty shift for thirty-six hours. The seminar room, which served as a rest area for doctors on night duty, had no locks, no CCTV coverage, and no security personnel. The hospital administration's initial response was to minimize the incident, characterize it as a suicide, and discourage immediate police notification. The victim's family was kept waiting for hours before being informed of her death.

On August 18, the Supreme Court of India took suo moto cognizance of the case, in addition to the Kolkata High Court, which was already hearing the case, and set up a nine-member National Task Force to formulate a pan-India protocol for the safety of doctors and medical professionals. Supreme Court Observer

The deeper institutional failures are more significant than the specific security lapses. The working conditions of resident doctors in Indian government hospitals, characterized by thirty-six-hour and forty-eight-hour duty shifts, inadequate rest facilities, routine sexual harassment that is systematically underreported because of power differentials between senior doctors and residents, and a culture of silence enforced by concerns about career consequences, are structural conditions that create the environment in which this crime occurred. These conditions have been documented by multiple surveys of medical residents over the years. The specific failure of the hospital's administration to provide adequate rest, security, and reporting infrastructure is a systematic failure, not a random one.

The subsequent vandalism of the hospital's emergency ward on the night of August 14 to 15, when a large mob attacked the hospital while protests were underway, added a dimension of political complexity that diverted attention from the systemic issues. The West Bengal government's response, which prioritized political damage control over substantive accountability, illustrated the way in which political calculation consistently supersedes genuine accountability in India's response to gender-based violence.

The West Bengal Legislative Assembly passed the Aparajita Woman and Child Bill (West Bengal Criminal Laws Amendment) in September 2024, which enhanced penalties for rape and introduced provisions for the death penalty in cases of rape resulting in death or where the victim is in a persistent vegetative state. The bill was sent to the President for assent, which has still not been granted as of early 2026. The national government's reluctance to assent reflects the ongoing debate about whether enhanced penalties, particularly the death penalty, actually deter rape or whether they merely provide the political satisfaction of appearing to respond forcefully without addressing the underlying structural failures.

The research evidence on deterrence and punishment severity is clear: the certainty of punishment, not its severity, is the primary deterrent to crime. Countries that have reduced rape by addressing the certainty of prosecution and conviction, rather than merely enhancing penalties, have been more successful than those that have relied on deterrence through severity. India's consistently low rape conviction rate means that the certainty of punishment for rape is extremely low, making enhanced penalties irrelevant to deterrence while creating additional pressure on rape survivors to pursue cases through a system that is already hostile to their interests.

CHAPTER FOUR: THE MARITAL RAPE EXCEPTION: COLONIAL PATRIARCHY'S MOST PERSISTENT LEGAL RESIDUE

4.1 The Legal History: From Hale to the BNS

The marital rape exception in Indian law has its origin in a statement by the seventeenth-century English judge Sir Matthew Hale, who wrote in his 1736 work "History of the Pleas of the Crown" that a husband cannot be guilty of rape committed by himself upon his lawful wife because by their mutual matrimonial consent and contract the wife hath given up herself in this

kind unto her husband which she cannot retract. Hale's statement was not based on any judicial authority; it was his personal opinion. But it was accepted as a principle of English common law and was incorporated, without examination, into the colonial legal frameworks that Britain imposed across its empire, including in the Indian Penal Code of 1860.

Britain itself abolished the marital rape exception in R v. R, decided by the House of Lords in 1991. In that case, the Lords explicitly acknowledged that Hale's statement rested on no legal authority and was incompatible with the modern understanding of marriage as a relationship between equal partners. Most Western and common law jurisdictions abolished the exception in the 1980s and 1990s. Most Western and common law jurisdictions have long since rectified this: Britain outlawed marital rape in 1991, and it is illegal in all 50 US states. But across the world, about 40 countries do not have legislation that addresses the issue of marital rape. CNN

India, despite ratifying CEDAW in 1993 and despite multiple judicial and legislative reform processes, has not abolished the exception. The Criminal Law (Amendment) Act of 2013 raised the minimum age of the wife for the exception to apply from fifteen to eighteen, following the Supreme Court's decision in Independent Thought v. Union of India in 2017. The Bharatiya Nyaya Sanhita of 2023, in section 63's Exception 2, maintains the exception for wives over eighteen. The exception currently reads: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape."

The philosophical foundation of this exception is the coverture doctrine, the feudal English law concept under which the legal personality of a married woman was merged into that of her husband. Coverture meant that a wife could not own property, could not enter contracts, could not sue or be sued, and had no legal existence independent of her husband. The marital rape exception is the direct legal offspring of coverture: it treats the wife's consent as having been permanently given through the marriage contract, rendering subsequent non-consent legally irrelevant.

Coverture has been formally abolished in India through the constitutional guarantees of equality. A married woman can own property, enter contracts, sue and be sued, vote, stand for election, and exercise all the rights of citizenship independently of her husband. But the marital rape exception preserves, in the domain of sexual autonomy, the core logic of coverture: that a wife's body belongs to her husband by virtue of the marriage contract. The logical incoherence of a legal system that simultaneously treats women as full legal persons and treats wives as having permanently consented to sexual access by their husbands is not an accident: it is a product of the compromise between formal legal modernity and deep structural patriarchy that has characterized India's approach to gender from independence to the present.

4.2 The Constitutional Case Against the Exception

The constitutional case against the marital rape exception is strong across multiple analytical dimensions. Exception 2's distinction between married and unmarried women violates Article 14 insofar as the classification created has no rational relation to the underlying purpose of the statute. The Supreme Court has held that any classification under Article 14 must have a rational nexus to the objective that the act seeks to achieve. The object of protecting women from sexual

violence is undermined by a distinction based on marital status, as the exception excludes married women from the same legal protections available to unmarried women. Harvard International Law Journal

The Article 21 argument is equally powerful. Article 21 guarantees the right to life and personal liberty, which the Supreme Court has interpreted to include the rights to health, privacy, dignity, safe living conditions, and safe environment. Courts have begun to acknowledge a right to abstain from sexual intercourse and to be free of unwanted sexual activity enshrined in these broader rights. In Puttaswamy, the Supreme Court recognized that the right to privacy includes decisional privacy reflected by an ability to make intimate decisions primarily consisting of one's sexual or procreative nature. Forced sexual cohabitation is a violation of that fundamental right. Harvard International Law Journal

The Article 15 argument goes further: Exception 2 discriminates against women on the basis of their marital status, which is a status directly related to their sex in the context of a hetero-normative legal framework. Marital status classification in the context of rape law is sex-based discrimination because the legal disability in question, the inability to withdraw consent to sexual access, applies exclusively to women in their capacity as wives.

The government's October 2024 affidavit opposing the striking down of the exception argued that criminalization would be "excessively harsh," would "destabilize the institution of marriage," and would lead to misuse through false complaints. The Supreme Court heard the Centre's argument and asked if criminalizing marital rape would "destabilize marriage," to which petitioners responded that these arguments were alibis for giving conservatism precedence over constitutional law. KnowledgeSteez These arguments were rejected by the Justice Verma Committee in 2013 and by multiple judicial opinions in India and abroad. The argument from "destabilization of marriage" is particularly revealing: it explicitly places the institution of marriage above the bodily integrity of the women within it. It says that the preservation of marriage as a social institution requires that married women accept sexual violation as one of marriage's features.

As the Supreme Court prepares to address this issue, the fundamental question emerges: can the legal immunity granted to husbands for non-consensual sexual acts within marriage withstand constitutional scrutiny? The persistence of this legally sanctioned hierarchy is understood through the "normative deficit" in the Indian constitutional framework, where married women possess fewer rights over their bodily autonomy than their unmarried counterparts. USAPP

Delhi High Court's split verdict in Aparnaa Bhattacharya v. Union of India, reviewed and reaffirmed in January 2025, marked partial progress: the majority affirmed that non-consensual marital sex constitutes a violation of Article 21's bodily integrity and dignity, drawing from Puttaswamy, but stopped short of striking down Exception 2, urging "prompt parliamentary intervention" to avoid constitutional vacuum. Record Of Law

The Chhattisgarh High Court in February-March 2025 reversed a decade-long sentence for a wife's brutal rape leading to death, stressing that non-consensual sex, even "unnatural," is legally acceptable in marriage if the wife is over fifteen. KnowledgeSteez This judgment illustrates the

direct human cost of the marital rape exception: a man whose wife died following his brutal rape of her was released because the law deemed him incapable of having raped his own wife. If any single judicial outcome illustrates the total moral bankruptcy of the marital rape exception, this is it.

4.3 The Sociology of Marital Rape in India

The National Family Health Survey data provides a disturbing portrait of the prevalence and normalization of marital sexual violence in India. NFHS-5 data from 2019 to 2021 found that a significant proportion of ever-married women in India reported having been subjected to spousal sexual violence. The specific numbers vary by state, but the overall pattern is consistent: marital rape is not a rare or exceptional phenomenon. It is a common feature of the intimate lives of millions of Indian women who have no legal recourse.

The sociology of marital rape in India is inseparable from the sociology of marriage itself. In the dominant marriage system across most of India, marriage is arranged by families rather than chosen by the individuals who will be married. The average age of marriage, while rising, remains relatively low: according to NFHS-5, 23.3 percent of women aged twenty to twenty-four were married before the legal minimum age of eighteen. Economic dependence is the norm for most married women: women's labor force participation in India is among the lowest in the world, at under 30 percent. The combination of arranged marriage without individual choice, early marriage in many communities, and economic dependence creates a structural context in which women's capacity to assert sexual autonomy within marriage is severely constrained even in the absence of direct violence.

This structural context means that the non-criminalization of marital rape is not merely a legal gap: it is an active legal endorsement of the structural conditions that make marital sexual violence possible and common. By maintaining the marital rape exception, the law tells Indian women that the sexual violation they may experience within marriage is not recognized as a violation at all: it is simply the exercise of a right that the husband acquired through the marriage contract.

The psychological and health consequences of marital rape are well documented. Rape within marriage causes the same forms of psychological trauma as rape by strangers: depression, anxiety, post-traumatic stress, and reduced capacity for intimacy and trust. In the marital context, there are additional dimensions: the ongoing nature of the relationship means there is no escape from proximity to the perpetrator; the economic and social dependence means there is no practical exit; the social stigma attached to marital breakdown, which in India falls disproportionately on women, means there is no safe path to disclosure.

The police reported 31,516 rapes in 2024, many happening within families. No one was punished for hurting their spouse, which shows problems with how the law is enforced and how people are not being protected as they should be. Vidhikarya

4.4 The International Human Rights Framework and Marital Rape

The international human rights framework is unambiguous on marital rape. The CEDAW Committee has consistently held that the marital rape exception is incompatible with CEDAW. General Recommendation No. 35 specifically addresses marital rape and calls on states to eliminate all forms of legal impunity for sexual violence including within marriage. The UN Special Rapporteur on Violence Against Women has similarly called on India to criminalize marital rape. The UN Human Rights Committee, in its 2024 review of India's ICCPR compliance, expressed concern about India's failure to criminalize marital rape.

India's response to these international calls has been consistent and deeply unsatisfactory: the government argues that marital rape is a sensitive social issue that must be addressed through cultural and social reform rather than through criminalization, and that the cultural context of Indian marriage makes criminalization inappropriate or premature. This argument has two distinct flaws. First, it treats cultural context as a justification for continued rights violations, when the entire premise of international human rights law is that cultural context cannot justify the denial of fundamental rights. Second, it inverts the relationship between law and culture: laws do not merely reflect cultural norms, they actively shape them. The non-criminalization of marital rape tells Indian society that marital rape is not a real crime, which reinforces exactly the cultural normalization that the government claims must be addressed first.

The judgment of the Karnataka High Court in 2022, which held that "rape is rape, be it done by a man, the husband, on the wife," and struck down the marital rape exception under state jurisdiction, represented exactly the judicial courage that India's constitutional jurisprudence demands. The contrast between this judgment and the Chhattisgarh High Court's 2025 judgment, which effectively acquitted a husband of his wife's rape-related death, illustrates the jurisdictional incoherence that results from judicial fragmentation on a question that the Supreme Court has failed to decisively resolve.

CHAPTER FIVE: DALIT WOMEN AND THE AXIS OF COMPOUNDED OPPRESSION

5.1 The Theory of Intersectionality in the Indian Context

Kimberle Crenshaw introduced the concept of intersectionality in a 1989 paper analyzing the discrimination experienced by Black women in American employment law, demonstrating that the law's treatment of sex discrimination and race discrimination as separate categories failed to capture the specific form of discrimination that Black women faced as Black women. The concept has been taken up extensively in feminist legal theory and applied across different national and social contexts.

In India, the intersection of caste and gender produces a form of compounded oppression that is in many respects more severe and more systematic than either caste oppression or gender oppression alone. Dalit women face the full weight of caste hierarchy, including the social assignment to degrading occupations, spatial segregation, restrictions on access to public

resources, and vulnerability to caste-based violence. They simultaneously face the full weight of gender hierarchy, including domestic violence, sexual violence, economic dependence, and the burdens of unpaid care work. At the intersection, these hierarchies amplify each other: Dalit women are more vulnerable to sexual violence than either Dalit men or upper-caste women, and their access to justice when violated is more limited than either.

The specific form of sexual violence against Dalit women by upper-caste men has historical roots in the caste system's assignment of sexual availability. The tradition of devadasi, the dedication of Dalit girls to temples in the name of religious service but effectively placing them in situations of sexual exploitation by dominant-caste men, is a documented historical practice that continues in some form in parts of Tamil Nadu, Karnataka, Andhra Pradesh, and Maharashtra. The right of dominant-caste landowners to sexual access to Dalit women working on their land was a pervasive feature of feudal agrarian relations and has not entirely disappeared with the formal abolition of bonded labor and untouchability.

Contemporary instances of caste-based sexual violence against Dalit women are documented with grim regularity by the NCRB and by civil society organizations. According to the NCRB data for 2022 and 2023, crimes against Scheduled Caste women have consistently included thousands of cases of rape every year. These represent only the reported cases: the underreporting of crimes against Dalit women is even more severe than for other categories of rape, because the structural barriers to reporting are compounded by caste-based police hostility.

5.2 The Hathras Case and Its Aftermath: Anatomy of Institutional Failure

The Hathras gang rape case of 2020, analyzed briefly in Part One of this textbook, deserves more extended analysis here because it represents the most complete and systematic illustration available of the specific failure mode that characterizes India's treatment of gender-caste intersecting violence.

On September 14, 2020, a nineteen-year-old Dalit woman from Hathras district in Uttar Pradesh was attacked while working in the fields near her village. She was found with severe injuries including a broken spine and a partially severed tongue. She was later hospitalized in Delhi, where she died on September 29. The perpetrators were upper-caste men from the village. The nature of the injuries was consistent with gang rape and severe physical assault, though the police initially sought to characterize the attack as solely involving physical assault rather than sexual violence.

What followed is worth documenting in detail as a case study of institutional failure. The Uttar Pradesh police's initial response was to challenge the family's account, to attempt to characterize the attack as less serious than reported, and to discourage media coverage. The Chief Minister of Uttar Pradesh, Yogi Adityanath, did not visit the family. When the victim died, the police took the body from Delhi to Hathras in the middle of the night and cremated it, allegedly forcibly, without the family's presence or consent, in an operation conducted entirely under police supervision. The cremation at three in the morning, with the family reportedly prevented from observing the rites, was widely interpreted as an attempt to destroy physical evidence of the sexual assault.

The local administration then imposed what amounted to a lockdown on the victim's village, restricting journalists' access. Police officers were stationed at the village to prevent interview access to the family. Several journalists who attempted to reach the village were detained. A local opposition leader, Rahul Gandhi, was physically stopped from reaching the family by police.

The Allahabad High Court took suo motu cognizance and ordered a CBI investigation. The CBI investigation was criticized as inadequate by the family's lawyers. In April 2021, a Hathras court acquitted all four accused of rape on the basis that the forensic evidence for sexual assault was insufficient, finding only one accused guilty of culpable homicide not amounting to murder. This outcome, read against the backdrop of the evidence destruction (the forcible cremation) and the institutional obstruction that characterized the entire process, raises profound questions about whether a fair investigation was ever possible.

The Hathras case illustrates the operation of what sociologists call "institutional racism" and what we might call "institutional casteism" in the criminal justice system: not necessarily individual officers making individually discriminatory decisions but a systematic institutional orientation that produces outcomes consistently disadvantaging Dalit women as a class. The specific institutional failures, the failure to register an FIR for rape initially, the evidence destruction through unauthorized cremation, the lockdown of the village, the obstruction of journalistic investigation, and the convenient inadequacy of the forensic evidence, may or may not have involved individual decisions motivated by explicit caste prejudice. But their cumulative effect was to ensure that the perpetrators of violence against a Dalit woman faced minimal accountability.

5.3 The SC-ST Prevention of Atrocities Act and its Failures for Women

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, amended in 2015, provides specific criminal penalties for a range of offenses committed against Scheduled Castes and Scheduled Tribes by persons who are not members of those communities. The offenses include forced consumption of noxious substances, wrongful occupation of land, sexual exploitation, economic exploitation, and various forms of humiliation and degradation. The Act was intended to address the inadequacy of the general criminal law in protecting Dalit and Adivasi communities from caste-based violence, because general criminal provisions were systematically under-enforced in these contexts.

For Dalit women, the Act provides specific protections: sexual exploitation by a dominant-caste person is an offense under the Act; so is forcing a Dalit woman to go naked or parade naked; so is sexual assault. The Act provides for Special Courts to try cases and for investigation by senior officers rather than rank-and-file constables. Anticipatory bail is not available to accused persons in SC-ST Atrocities cases under the 2018 amendment.

The gap between these provisions and their implementation is enormous. Police registration rates for SC-ST Atrocities Act cases are low relative to the incidence of violations. Investigation quality is poor. Conviction rates are very low. The 2018 Supreme Court judgment in Subhash Kashinath Mahajan, which introduced new requirements for prior inquiry before arrest in SC-ST

Atrocities cases, was widely criticized by Dalit organizations as weakening the Act's protective function and was subsequently reversed by Parliament through the 2018 Amendment Act. The judicial oscillation on the implementation standards of the SC-ST Atrocities Act reflects the broader institutional ambivalence about the level of protection that Dalit women deserve.

The NCRB data for 2023 showed over 57,000 crimes against Scheduled Castes including thousands of cases of rape. The Human Rights Watch 2025 report documented multiple specific incidents: three young men in Uttar Pradesh forced a fifteen-year-old Dalit boy to drink urine; railway police officials in Madhya Pradesh beat a Dalit woman and her fifteen-year-old grandson; a twenty-year-old Dalit nurse was raped by a doctor in a private hospital in Uttar Pradesh. Human Rights Watch

These documented incidents represent a fraction of the actual violence. The experience of Dalit women's organizations that work on documentation and legal assistance consistently indicates that the actual incidence of gender-caste violence is many times higher than official statistics suggest, and that the combination of social pressure, institutional hostility, and economic dependence means that the overwhelming majority of incidents never enter the formal record at all.

5.4 Manual Scavenging, Dalit Women, and Occupational Violence

Manual scavenging is the extreme end of caste-based occupational assignment: the practice of cleaning dry latrines and sewers by hand. It is assigned almost exclusively to specific Dalit sub-castes, and within those sub-castes it is disproportionately assigned to women. The Valmiki community in North India is most associated with manual scavenging: Valmiki women have been, across generations, the primary performers of this work, carrying human waste in baskets on their heads, subject to strict rules of spatial separation from upper-caste communities, and treated as irretrievably polluted by their occupational contact with human excrement.

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act of 2013 provides comprehensive prohibition and rehabilitation provisions. But implementation has been consistently inadequate. The National Commission for Safai Karamcharis, as noted in Part One, estimated hundreds of thousands of manual scavengers continuing to work in violation of the prohibition. The Supreme Court's interventions in Safai Karamchari Andolan v. Union of India have produced Court orders but not effective enforcement.

For Dalit women manual scavengers, the rights violations are multiple and layered. The occupational compulsion to perform degrading work is itself a human rights violation, a form of forced labor rooted in caste. The health consequences of manual scavenging, exposure to toxic gases, bacterial and viral infections, parasitic diseases, and the physical stress of carrying heavy loads, are severe and well-documented. The deaths of sanitation workers in sewer-related accidents, overwhelmingly Dalit men, but also Dalit women in dry latrine cleaning contexts, represent occupational safety violations that are not adequately investigated or compensated.

The psychological dimension of manual scavenging's impact on Dalit women deserves particular attention. Being assigned by birth to an occupation that the rest of society treats as the

embodiment of pollution and degradation is not merely an economic disadvantage: it is a systematic assault on self-concept, dignity, and psychological integrity. The theoretical framework of Martha Fineman's vulnerability theory is specifically applicable here: Dalit women engaged in manual scavenging are, by design of the caste system, deprived of the resilience assets, economic, educational, social, and psychological, that would allow them to respond to and recover from the harms they face.

CHAPTER SIX: MUSLIM WOMEN, PERSONAL LAW, AND THE POLITICS OF RELIGIOUS REFORM

6.1 The Triple Talaq Decision and Its Limitations

The Supreme Court's 2017 judgment in Shayara Bano v. Union of India, which declared the practice of instant triple talaq (talaq-e-biddat, the pronunciation of the word "talaq" three times simultaneously to effect an immediate divorce) unconstitutional by a three-to-two majority, was a landmark in gender rights jurisprudence. The practice had long been condemned by women's organizations in Muslim communities as arbitrary and deeply unequal: a husband could end a marriage instantaneously with a verbal formula (or, increasingly, through a WhatsApp message), leaving the wife without any procedural protection, without guaranteed maintenance, and without the certainty that the divorce was valid.

The majority in Shayara Bano held that instant triple talaq was manifestly arbitrary and therefore violated the right to equality under Article 14. The subsequent Muslim Women (Protection of Rights on Marriage) Act of 2019, which criminalized the utterance of instant triple talaq and created penalties including imprisonment, was criticized by Muslim organizations as an overreach that imposed criminal sanctions in a domain where civil remedies would be more appropriate. The criminalization was also criticized as a potential tool for harassment: a wife seeking a divorce could use the threat of criminal charges against her husband's triple talaq as leverage, which is a legitimate concern, but so could family members of a wife who objected to her seeking divorce make a retaliatory criminal complaint.

The more fundamental critique of the triple talaq jurisprudence from the feminist perspective is that it addressed the symptom while leaving the underlying disease intact. Muslim personal law, even after the triple talaq reform, continues to treat women unequally in marriage, divorce, and inheritance in ways that the Shayara Bano judgment did not address. Muslim women can be made the subject of valid divorce by a unilateral declaration from the husband under the talaq-e-ahsan (a valid form of divorce done in three separate pronouncements over three months) and talaq-e-hasan procedures. They continue to have no right to divorce on equal terms with men: a Muslim woman who wants a divorce must seek it through a khul, a dissolution agreed by the husband or through a court, while a Muslim man can divorce unilaterally. The inheritance provisions of Muslim personal law give daughters half the share of sons. Polygamy, permitted under Muslim personal law, remains available to men.

Flavia Agnes, one of India's foremost feminist legal scholars on personal law and women's rights, has argued in her extensive body of work that the liberal and Hindu nationalist focus on Muslim personal law as the primary site of gender injustice in Indian law is deeply misleading. Hindu personal law contains its own gender inequalities; Christian personal law has been reformed but still contains some inequalities; and the selective focus on Muslim personal law reflects Hindu nationalist agendas rather than a consistent gender justice framework. Agnes's work demonstrates that the Uniform Civil Code demand, as it has been formulated in Indian politics, is not primarily about women's rights: it is about imposing a majoritarian legal framework on religious minority communities.

The genuine feminist position on Muslim personal law reform, Agnes argues, must be articulated within the Muslim community and by Muslim women themselves, through internal religious and political processes, rather than imposed from outside through majoritarian legislative action or judicial overreach. This does not mean accepting continued discrimination: it means recognizing that reform imposed from outside, particularly by a government whose record on Muslim rights is one of systematic discrimination, is unlikely to serve the interests of Muslim women.

6.2 The Uniform Civil Code: Women's Rights or Communal Domination?

The 22nd Law Commission of India, in a consultation paper published in June 2023, took the unusual step of recommending against the enactment of a Uniform Civil Code at this stage, noting that it is "neither necessary nor desirable at this stage" and recommending instead the codification and reform of personal laws within each religious community. This recommendation was explicitly contrary to the BJP government's long-standing political position. The BJP's 2024 election manifesto included a commitment to enacting a Uniform Civil Code.

Uttarakhand became the first state to enact a Uniform Civil Code in January 2024, with the legislation taking effect in January 2025. The Uttarakhand UCC covers marriage, divorce, inheritance, adoption, and live-in relationships, and applies to all residents of the state regardless of religion. The code's application to live-in relationships, including a requirement that live-in couples register their relationship with the government, has been criticized as an invasion of privacy. Its treatment of various religious personal law practices has been criticized by Muslim organizations as targeting Muslim practice while providing exceptions that effectively preserve Hindu practices under different names.

The feminist analysis of the UCC question requires holding multiple considerations simultaneously. The argument for a UCC from a gender justice perspective is that all women, regardless of religion, deserve equal legal protection in marriage, divorce, and inheritance, and that personal law systems that discriminate against women should be reformed. This argument is correct. The argument against the UCC as currently formulated by the Hindu nationalist movement is that it is being advanced not in the service of women's equality but in the service of majoritarian cultural homogenization, and that its discriminatory application will harm rather than protect Muslim and Christian women. This argument is also correct.

The resolution of this tension requires the development of a genuinely egalitarian personal law reform agenda that is free of communal bias: one that applies equal standards to Hindu, Muslim,

Christian, and other personal law systems; that is developed in genuine consultation with women from all communities; and that prioritizes the specific forms of discrimination that women identify as most harmful to their lives, rather than the forms that are most politically useful for communal mobilization.

6.3 The Hijab Ban and Religious Freedom

The controversy over the wearing of the hijab in Karnataka educational institutions in 2021 and 2022, which culminated in a Karnataka High Court judgment upholding the ban and a Supreme Court split verdict in October 2022 that effectively left the High Court judgment standing, illustrates the intersection of religious freedom, gender rights, and communal politics in a particularly fraught way.

The Karnataka government, led by the BJP, upheld the ban on students wearing the hijab in government colleges that had imposed it through their governing bodies. The affected students, all Muslim girls, challenged the ban as violating their fundamental rights to freedom of religion under Article 25, freedom of expression under Article 19, and equality under Articles 14 and 15.

The feminist dimension of the hijab case is complex. Some feminist organizations viewed the hijab ban as a matter of women's autonomy: if a woman chooses to wear the hijab as an expression of her religious identity, a ban on wearing it is a restriction on her autonomy. Other feminist organizations viewed the hijab as itself a symbol and instrument of female subordination, arguing that genuine feminist support for women requires challenging the religious practices that constrain them, not defending the right to be constrained.

The postcolonial feminist tradition, drawing on Chandra Mohanty's critique of the "third world woman" as a passive victim who must be liberated by external intervention, warns against the second position: it is not for non-Muslim feminists to determine whether the hijab is an expression of autonomy or an instrument of oppression. That determination must be made by the women themselves. And many of the specific women who were challenging the ban, in their own voices, were expressing the view that they chose to wear the hijab as an affirmative expression of their religious identity, not as a submission to coercion.

The Supreme Court's split verdict in the hijab case, with Chief Justice Chandrachud and Justice Sudhanshu Dhulia reaching different conclusions, illustrates the judicial difficulty of the intersecting rights claims. Justice Dhulia's dissent, which would have struck down the hijab ban, addressed the bodily autonomy dimensions of the case directly: a woman's choice of dress is among the most intimate of personal choices, and the state's claim to override it on the basis of institutional uniformity is a serious restriction on personal liberty that requires compelling justification. The failure to resolve this question at the Supreme Court level has left Muslim girls in Karnataka's government colleges in a state of legal uncertainty that effectively denies them the ability to simultaneously pursue education and practice their religion as they understand it.

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CHAPTER SEVEN: WORKPLACE HARASSMENT, THE POSH ACT, AND THE LIMITS OF FORMAL LEGAL PROTECTION

7.1 From Vishaka to POSH: The History of Workplace Sexual Harassment Law

The history of legal protection against workplace sexual harassment in India begins with a tragedy. Bhanwari Devi was a Rajasthan government saathin (community organizer) who attempted to prevent a child marriage in 1992 in Bhateri village. As retaliation, she was gang-raped by five upper-caste men from the village. The police refused to register a proper FIR. The medical examination was conducted improperly. The sessions court acquitted all five accused in 1995. The case became a landmark not in the criminal justice context but in the constitutional context: women's organizations filed a writ petition in the Supreme Court raising the systemic issue of sexual violence against women who work, particularly those who work to protect women's rights.

The Supreme Court's judgment in Vishaka v. State of Rajasthan in 1997 was constitutionally innovative: in the absence of legislation on workplace sexual harassment, the Court used Articles 14, 15, 19, and 21 of the Constitution and India's obligations under CEDAW to lay down binding guidelines for preventing and redressing sexual harassment at the workplace. The Vishaka guidelines required every employer to constitute a Complaints Committee, to hold regular awareness programs, and to ensure prompt and fair inquiry into complaints. The guidelines remained in force for sixteen years until the Protection of Women from Sexual Harassment (POSH) Act came into force in 2013.

The POSH Act is India's first comprehensive legislation on workplace sexual harassment. It requires every organization with ten or more employees to constitute an Internal Complaints Committee with at least fifty percent women members, including a Presiding Officer who must be a woman employed at a senior level. Organizations with fewer than ten employees, and women in the informal sector and domestic work, are covered by Local Committees constituted at the district level by the district administration. The Act defines sexual harassment broadly, covering physical contact and advances, demand or request for sexual favors, sexually colored remarks, showing pornography, and any other unwelcome physical, verbal, or nonverbal conduct of a sexual nature. It provides for a conciliation procedure at the complainant's request, for an inquiry into complaints, for interim relief during inquiry, and for disciplinary action following a finding of harassment.

7.2 The Gap Between POSH's Promise and Its Implementation

The gap between the POSH Act's framework and its actual implementation is extensive and well documented. A 2021 survey by the Society for Human Resource Management found that only 36 percent of organizations had constituted Internal Complaints Committees. A 2022 assessment found that many of the ICCs that existed on paper had members who had not been trained in the Act's procedures or in the psychology of harassment complaints. The Local Committees, which are supposed to provide coverage for informal sector workers, have in most districts never been effectively constituted, or exist in name only without functional capacity to receive or investigate complaints.

The problem is structural as well as administrative. The POSH Act's framework is oriented toward formal sector employment with formal institutional structures: the requirement of an ICC with specific membership criteria, formal inquiry procedures, and written documentation maps onto a large corporation or government organization but is completely unsuitable for the informal sector, the domestic work sector, agriculture, or the gig economy, where the overwhelming majority of Indian women work. The gender-disaggregated labor force participation data shows that most Indian women who work at all work in the informal sector, in agriculture, or as domestic workers: categories that the POSH Act is, in practice, unable to protect.

The specific situation of domestic workers is particularly grave. India has approximately four to five million domestic workers, predominantly women and disproportionately from Dalit and Adivasi communities and from minority religious communities. Domestic workers work in private homes, which are private spaces outside the normal scope of labor regulation and, in practice, outside the scope of POSH enforcement. They are frequently subjected to verbal abuse, physical violence, economic exploitation through wage theft, and sexual harassment including assault by male members of the employing household. Their access to any legal remedy is extremely limited: they are unlikely to know about POSH or Local Committees, they lack the resources to engage legal assistance, and the power differentials between domestic workers and their employers create severe practical barriers to complaint.

Women often face wage discrimination, limited opportunities for advancement, and a disproportionate burden of unpaid domestic and care work. This "invisible labor" sustains families but remains unrecognized in policy and economics. LawArticle

The specific context of women in the medical profession deserves attention in the post-RG Kar environment. The National Medical Commission's data shows that women constitute approximately 32 percent of India's registered doctors but are concentrated in lower levels of the medical hierarchy. The culture in medical education and training in India has been documented as characteristically patriarchal and hierarchical, with junior doctors, and particularly female junior doctors, exposed to sexual harassment from senior colleagues without effective redress mechanisms. The RG Kar case brought these structural conditions into national awareness, but the systemic reform they demand has not yet been comprehensively addressed.

7.3 Workplace Safety as a Feminist Issue: The Political Economy of Risk

The question of women's physical safety in workplaces is inseparable from the political economy of women's employment. India's female labor force participation rate, at under 30 percent by most measures, is among the lowest in the world and has been a persistent concern across development analyses. The 2025 Global Gender Gap Index noted that India records a slight drop in parity in Political Empowerment, with female representation in parliament falling from 14.7 percent to 13.8 percent in 2025, lowering the indicator score for the second year in a row. GOV.UK

The reason why so few Indian women participate in the formal labor force is not that they do not work: the NFHS-5 data shows that the vast majority of Indian women are engaged in agricultural

work, unpaid household work, and care work that is economically significant but not counted in labor force participation statistics. The reason is that the formal and informal paid labor markets in India are structured in ways that make women's participation difficult and unsafe: the prevalence of sexual harassment without effective redress, the absence of childcare support, the lack of flexible work arrangements, the wage discrimination that makes women's labor less valued, and the physical safety risks associated with many employment contexts, including the risk that the RG Kar case documented in the healthcare context.

The political economy argument connects women's safety to women's economic empowerment: unsafe workplaces are not merely a human rights violation in themselves, they are an economic mechanism for keeping women out of the labor force and therefore maintaining their economic dependence on male family members. The harassment that a woman faces when she attempts to work is both a cause and a consequence of her subordinate position in the economic structure: it is a cause because it deters women from seeking employment; it is a consequence because economically dependent women are more vulnerable to exploitation.

Amartya Sen's capability approach, developed in The Development as Freedom and elaborated in the context of gender by Nussbaum, argues that genuine development requires the expansion of real freedoms, capabilities that people have to lead the lives they have reason to value. The capability to work in a safe environment, free from harassment and exploitation, is a central capability that the Indian state is systematically failing to build and protect for women.

CHAPTER EIGHT: DOWRY, DOMESTIC VIOLENCE, AND THE ECONOMY OF INTIMATE PARTNER VIOLENCE

8.1 The Dowry System: Political Economy and Violence

Dowry, the transfer of assets from the bride's family to the groom and his family at marriage, is both a social institution and an economic mechanism. As a social institution, it is embedded in the cultural logic of Hindu caste society, in which marriage is the primary occasion for the transfer of resources between families and in which the status of the daughter in her natal family is expressed through the quantity of resources transferred at her marriage. As an economic mechanism, it operates as a form of reverse inheritance: rather than parents bequeathing resources to daughters, daughters' families must transfer resources to the families into which daughters are married.

The Dowry Prohibition Act of 1961 prohibits the giving or receiving of dowry. But the Act has been spectacularly ineffective: dowry demands and dowry-related violence have, if anything, intensified rather than diminished in the sixty-five years since the Act's passage. This failure illuminates an important general truth about the limits of criminal law as a mechanism for changing deeply entrenched social practices: a law that criminalizes behavior that the majority of the population considers normal and necessary is unlikely to be enforced because police, prosecutors, magistrates, and juries are all drawn from the same population that considers the behavior normal.

The escalation of dowry demands, which researchers have documented particularly in the period of economic liberalization since 1991, is related to the emergence of a consumer economy in which the possession of specific goods, motorcycles, cars, refrigerators, television sets, gold, cash, has become a marker of social status. Dowry has evolved from a transfer of productive assets like land to a transfer of consumer goods and cash, and the demands have in many cases escalated beyond what families can afford without incurring debt or selling productive assets.

Dowry-related violence is the consequence of the failure to meet demands or of demands increasing after marriage. The NCRB categorizes "dowry deaths" as deaths of women within seven years of marriage where evidence suggests the death was caused by harassment related to dowry demands. The NCRB reported approximately 6,450 dowry deaths in 2022, a figure that almost certainly understates the true number because many dowry-related murders are recorded as kitchen accidents, suicides, or unexplained deaths.

Section 498A of the IPC, now Section 85 of the BNS, which punishes cruelty to a wife by her husband or his relatives, including cruelty related to unlawful dowry demands, was enacted in 1983 following extensive advocacy by women's organizations. It provides for imprisonment of up to three years. But the use of Section 498A has been controversial: the Supreme Court in Arnesh Kumar v. State of Bihar in 2014 issued guidelines specifically limiting automatic arrest under Section 498A, citing concerns about misuse. The Court's concerns about false complaints, while not without empirical basis, have been widely criticized as reflecting the same patriarchal assumptions about women's credibility that undermine rape prosecution, and as tilting the balance too far toward protection of accused persons at the expense of genuine victims.

8.2 The Protection of Women from Domestic Violence Act: A Critical Assessment

The Protection of Women from Domestic Violence Act of 2005 is the primary civil law instrument for protecting women from intimate partner violence. Unlike Section 498A, which is a criminal provision, the PWDVA creates civil remedies including protection orders, residence orders, custody orders, and monetary relief. The Act applies to women in any domestic relationship, including marriage, live-in relationships, and family relationships, and covers physical, sexual, verbal, emotional, and economic abuse.

The PWDVA was a significant legislative achievement, reflecting years of advocacy by women's organizations, particularly Majlis Manch's work in Mumbai. Its coverage of economic abuse, which includes withholding access to financial resources, depriving women of assets, and preventing women from maintaining employment, was pathbreaking. Its inclusion of women in live-in relationships represented an important recognition of the legal vulnerability of women in relationships outside formal marriage.

But the PWDVA's implementation has been deeply inadequate. The Act creates a mechanism involving Protection Officers, Service Providers, and Magistrate-level courts, but the infrastructure for implementing this mechanism has not been adequately built. Many Protection Officers have not been appointed or are not functional. Service Providers, the organizations designated to provide support to complainants, are often non-existent in rural areas and inadequately funded even in urban areas. The courts that handle PWDVA cases are the same

magistrate courts that handle general criminal cases, with the same backlogs, the same inadequately trained magistrates, and the same structural hostility to women's complaints.

The specific inadequacy of the PWDVA's protections for rural women, women in agricultural communities, and women in communities where domestic violence is the most normalized deserves particular attention. The Act's civil mechanism is only accessible to women who know about it, who have access to legal assistance or can navigate the system themselves, and who are willing to face the social consequences of taking legal action against their husbands. In communities where domestic violence is treated as a normal part of marriage, where women have no economic independence, and where the entire social network of the woman is connected to the husband's family and community, these preconditions are rarely met.

The NFHS-5 data, which asked women directly about their experience of intimate partner violence, found that thirty-two percent of married women between the ages of eighteen and forty-nine had experienced physical, sexual, or emotional violence by their husband. This figure translates to many millions of women. Of this thirty-two percent, only a small fraction had ever sought help from formal sources including police and NGOs. The overwhelming majority managed domestic violence entirely within the family or through informal community mechanisms, which typically function to reconcile the woman to the situation rather than to provide genuine protection.

8.3 Acid Attacks: The Terror of Gender-Based Disfigurement

Acid attacks, in which acid or other corrosive substances are thrown at a person with the intent to disfigure or kill, are a gender-based crime in which the overwhelming majority of victims are women and girls, and the majority of perpetrators are men who are motivated by rejection of romantic or sexual advances, refusal to marry, family property disputes, or general desire to control and punish women who assert autonomy.

The Criminal Law (Amendment) Act of 2013 created specific criminal offenses for acid attacks and related provisions requiring state governments to provide free medical treatment to acid attack survivors. But the implementation of both the criminal provisions and the medical treatment provisions has been inadequate. Prosecution rates for acid attacks are low; the availability of acid, which is sold freely for cleaning purposes across India, has not been effectively regulated despite multiple court orders requiring stricter regulation; and the quality of medical treatment available to survivors, particularly in government hospitals in smaller cities and rural areas, is frequently inadequate for the complex reconstructive surgery that acid attack injuries require.

Acid attack survivors face a double violation: the physical violence of the attack and the psychological and social violence of the disfigurement that follows. In a society that treats women's beauty as essential to their social value and marriage prospects, disfigurement by acid is calculated to destroy a woman's social life as well as her physical integrity. The organization Chhanv Foundation, which supports acid attack survivors, has documented the social isolation, loss of employment, family abandonment, and depression that characterize the lives of many survivors.

The theoretical analysis of acid attacks in the feminist framework draws on Catherine MacKinnon's argument that sexual violence is not primarily about sex but about power: it is the use of sexuality as an instrument of gender domination. Acid attacks fit this analysis precisely: they are instruments of male domination used against women who have asserted autonomy, rejected control, or refused to accommodate male demands. The disfigurement they produce is simultaneously a punishment and a warning to other women.

CHAPTER NINE: GENDER, TECHNOLOGY, AND THE NEW FRONTIERS OF VIOLENCE

9.1 Technology-Facilitated Gender-Based Violence: The Emerging Crisis

The rapid expansion of mobile internet access across India, which has created a country with over 900 million mobile subscribers as of 2025, has been transformative for economic life, social communication, and information access. It has also created new dimensions of gender-based violence that existing legal frameworks are poorly equipped to address.

Technology-facilitated gender-based violence (TFGBV) encompasses a range of practices including non-consensual sharing of intimate images ("revenge porn"), online harassment and threatening messages, cyber-stalking, morphing of images using artificial intelligence tools to create fake pornographic content featuring real women, doxxing (publishing personal information with intent to facilitate offline harm), and coordinated mob harassment through social media platforms.

Online spaces in India are becoming increasingly dangerous due to the escalation of technology-facilitated gender-based violence. Survivors describe being threatened, publicly shamed, and silenced, yet few find justice in a system that is slow to respond, fragmented, and underresourced. Digital platforms and everyday technologies are weaponized in a mounting crisis underpinned by discrimination, legal gaps, and tech companies' failure to embed safety and act swiftly and effectively. Equality Now

The research by Breakthrough and Equality Now, published in November 2025, provides the most comprehensive recent analysis of TFGBV in India. Survivors describe ongoing fear and humiliation, career disruption, and lasting psychological harm, coupled with a sense that the justice system is not designed to protect them. One survivor described filing a complaint as another violation, having to relive everything, only to be told it was her fault. Victim-blaming, prejudice, a culture of disbelief, and family pressure discourage reporting, meaning TFGBV's true extent is likely far greater than official figures indicate. Young women spoke of not wanting their parents to know about abuse, anticipating they would be blamed, judged, and their freedoms restricted. LGBTQ+ individuals face added fears and threats of being outed and ostracized. Equality Now

The caste and class dimensions of TFGBV are significant: caste, tribe, class, and disability heighten women's vulnerability to TFGBV. Equality Now Dalit women and women from

Adivasi and minority communities face specific forms of TFGBV including the use of online platforms to organize caste-based harassment campaigns, the circulation of degrading content targeting women who have asserted social or political rights, and the weaponization of social media to facilitate real-world violence against women who have filed police complaints or given public testimony about violations.

9.2 The Legal Framework for Cyberspace Violence: IT Act and Its Limitations

The Information Technology Act of 2000 and its 2008 amendment contain several provisions relevant to online harassment: Section 66A, which criminalized offensive online communication but was struck down by the Supreme Court in Shreya Singhal v. Union of India in 2015 as unconstitutionally vague; Section 66E, which criminalizes violation of privacy through the capture and transmission of intimate images; Section 67, which criminalizes publication of obscene material; Section 67A, which criminalizes publication of sexually explicit material; and Section 67B, which criminalizes child pornography.

The Bharatiya Nyaya Sanhita of 2023 added some new provisions relevant to online harassment, including a specific provision on sharing intimate images without consent. But the overall legal framework for addressing TFGBV remains fragmented and inadequate. There is no comprehensive online harassment law in India that creates a coherent set of offenses, a clear victims' support framework, and an effective enforcement mechanism. The striking down of Section 66A, while correct as a free speech matter, created a gap in the legal framework that has not been adequately filled.

The enforcement problems are compounded by the digital divide in the police and prosecution services. Most police officers at the station level in India have inadequate training in cybercrime investigation, lack the technical equipment and forensic software to investigate complex online offenses, and lack the institutional knowledge to work with social media platforms to obtain evidence. The specialized cybercrime units that have been established in major cities are understaffed and overwhelmed. The result is that the vast majority of TFGBV cases that are reported to police do not result in investigation, let alone prosecution.

The platforms themselves, the large social media companies including Facebook, Instagram, Twitter/X, and YouTube, operate in India under the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021. The rules require platforms to designate a Grievance Officer and a Nodal Contact Person, to respond to government orders within specific time frames, and to remove specified categories of content within twenty-four hours. But the rules' primary orientation is toward government-ordered content removal rather than victim-requested removal of harassing content, and the compliance of platforms with victim-facing harassment removal requests has been widely criticized as slow, inconsistent, and inadequate.

Minimal understanding of TFGBV's psychological and social impacts, and the failure to adopt survivor-centered approaches, leaves India's justice system focused on punishment while neglecting victim support and recovery. Equality Now

9.3 Artificial Intelligence, Deepfakes, and the New Dimensions of Sexual Violence

The rapid development of artificial intelligence tools for generating realistic fake video and image content has created a new and devastating dimension of gender-based violence: the use of AI-generated deepfakes to create non-consensual pornographic images and videos featuring real women's faces on digitally generated bodies in sexual situations. This technology is accessible, free, and requires no technical expertise. It is being weaponized against women, particularly those in public life including politicians, journalists, celebrities, and social activists, at an accelerating rate.

India does not have specific legislation addressing AI-generated deepfake pornography. The existing provisions on obscenity and privacy may provide some basis for prosecution in specific cases, but they are not designed to address the specific harms of this technology: the difficulty of removing content once shared online, the psychological harm of seeing oneself depicted in sexual situations without consent, the reputational damage from fake content being mistaken for genuine, and the specific use of this technology to silence women who speak publicly on issues of gender and politics.

The emerging feminist legal scholarship on AI and gender, drawing on works by Kate Crawford, Virginia Eubanks, and others, argues that artificial intelligence systems are not neutral tools: they encode and amplify existing social biases, including gender bias. AI face-generation models trained primarily on images of white men encode assumptions about what a "neutral" face looks like that disadvantage women and persons of color. AI content moderation systems have been documented as less effective at identifying and removing harassment targeting women of color. The feminist legal framework must therefore engage not only with specific abusive uses of AI but with the systematic gender biases embedded in AI systems themselves.

CHAPTER TEN: POLITICAL PARTICIPATION, REPRESENTATION, AND THE WOMEN'S RESERVATION ACT

10.1 The Representation Deficit

The relationship between women's political representation and women's rights is one of the most extensively studied questions in comparative politics. The empirical evidence consistently shows that higher levels of women's representation in legislatures are associated with stronger attention to gender issues in legislation, greater social spending on health and education, and lower levels of gender-based violence as measured by various indicators. The theoretical explanation is straightforward: legislators who have not experienced gender-based discrimination as a life reality are systematically less likely to prioritize its elimination.

India's record on women's political representation is poor by any comparative standard. The 2025 Global Gender Gap Index noted that female representation in parliament falls from 14.7 percent to 13.8 percent in 2025, lowering the indicator score for the second year in a row below 2023

levels. Similarly, the share of women in ministerial roles falls from 6.5 percent to 5.6 percent. GOV.UK

This is a deeply troubling trajectory. In a period when India claims to be advancing women's empowerment through various government schemes, the actual representation of women in the institutions that make the laws and policies affecting women's lives is declining. The symbolic presence of women in the highest constitutional offices, including a female President and female Chief Ministers in several states, does not translate into systemic change in a parliamentary democracy where the composition of the legislature determines the priorities of legislation.

The Women's Reservation Bill, which reserved one-third of seats in the Lok Sabha and state legislative assemblies for women, was introduced in the Rajya Sabha in 1996 and repeatedly failed to pass through the Lok Sabha over the following decades due to opposition from political parties that prioritized caste-based reservation concerns over gender representation. The Constitution (106th Amendment) Act, passed in September 2023 and signed into law as the Nari Shakti Vandan Adhiniyam, finally enacted one-third reservation for women.

But there is a significant catch: the reservation is not to take effect immediately. It will come into force after the next census (which had been delayed and was still pending as of 2026) and after the subsequent delimitation of constituencies. This means the reservation will not actually operate until at least the general elections of 2029 or later, and potentially much later if the census and delimitation process is delayed. The BJP government's decision to enact a reservation bill that will not operate for years has been criticized as a political gesture that provides the electoral benefit of apparent support for women's rights without delivering the actual representation change that would require the party to cede safe male-held seats to women candidates.

The theoretical debates about quotas and representation in feminist political theory are engaged with this development. Anne Phillips's "politics of presence," developed in her 1995 work of that name, argues that democratic legitimacy requires that the people who make decisions be representative of those affected by those decisions, and that substantive representation, the making of decisions that reflect women's interests and perspectives, requires descriptive representation, actual presence of women in decision-making bodies. Phillips's analysis provides a powerful justification for the reservation and a critique of the delayed implementation.

Hanna Pitkin's earlier analysis of representation, in her 1967 work "The Concept of Representation," distinguished between "formalistic" representation (having the formal authority to represent), "descriptive" representation (resembling those represented), "symbolic" representation (standing for without actually representing), and "substantive" representation (acting in the interest of those represented). The symbolic women in top offices, cited by the BJP government as evidence of women's empowerment, perform Pitkin's "symbolic" function without delivering "substantive" representation. Genuine gender justice in democratic politics requires the latter.

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10.2 Caste, Gender, and the Complexity of Reservation Politics

The intersection of caste and gender in the reservation system creates a particularly complex set of debates about the allocation of political rights. The existing reservation of seats for Scheduled Castes, Scheduled Tribes, and Other Backward Classes in legislatures and in public employment creates a framework within which the introduction of women's reservation requires negotiation among multiple competing identity claims.

The demand of women's organizations for reservation within reservations, specifically that a proportion of the seats reserved for Scheduled Castes and Other Backward Classes also be reserved for women from those communities, reflects the understanding that formal women's reservation, unmodified by sub-reservations, may primarily benefit women from dominant social groups. The evidence from states with women's reservation in Panchayati Raj institutions, which has been in place since the Seventy-Third Constitutional Amendment of 1992, shows that in the absence of sub-reservations, reserved seats for women in upper-caste-dominated Panchayats tend to be filled by "proxy" candidates who are wives or daughters-in-law of dominant-caste men and who vote as directed by their male relatives.

This pattern illustrates the general problem with formal representation without transformation of the underlying social structures: representation within a profoundly unequal social structure may simply replicate that inequality within the representative body rather than challenging it. The women who enter politics through the reserved seats are those with the social networks, family backing, and economic resources to contest elections: in the current social structure, this means women from dominant social groups far more than women from Dalit, Adivasi, or Muslim communities.

The political solution is a combination of sub-reservations for women from specific disadvantaged communities with a broader transformation of the political culture through which women are supported and financed to contest elections. The women's reservation by itself is a necessary but insufficient step toward genuine gender justice in political representation.

CHAPTER ELEVEN: REPRODUCTIVE RIGHTS, SON PREFERENCE, AND BODILY AUTONOMY

11.1 The Legal Framework for Reproductive Rights

Reproductive rights, the rights of women to make autonomous decisions about their sexual and reproductive lives, are among the most contested human rights claims in contemporary political philosophy and international law. The ICPD Programme of Action, adopted at the International Conference on Population and Development in Cairo in 1994, established the reproductive rights framework that has become standard in international human rights law: every person has the right to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so. This framework specifically includes the right to access safe abortion services.

India's legal framework on abortion is among the most liberal in Asia. The Medical Termination of Pregnancy Act of 1971, as amended in 2021, allows abortion up to twenty weeks of pregnancy on broad grounds including contraceptive failure, rape, fetal abnormality, and the medical provider's opinion that continuation of pregnancy would involve risk to the woman's physical or mental health. Between twenty and twenty-four weeks, abortion is allowed for specific categories including survivors of rape and incest, minors, and women with fetal abnormalities, by a board of doctors. The MTP Act does not require the consent of the woman's husband or family for termination.

The Supreme Court's judgment in X v. State of Rajasthan in 2022, which extended the grounds for abortion under the MTP Act to unmarried women on grounds equivalent to those available for married women, was a significant progressive development. The earlier position of the Act was ambiguous about whether unmarried women could access abortion under the contraceptive failure ground, which some interpreted as applying only to married women. The Court clarified that all women, regardless of marital status, have the right to safe and legal abortion under the Act.

The Puttaswamy privacy judgment provides a strong constitutional foundation for reproductive rights: the right to privacy includes the right to make intimate decisions about one's own body and reproductive choices, and a law that restricts a woman's access to abortion is a restriction on this constitutional right that must be justified by a compelling state interest.

But the legal framework, while liberal, is undermined by significant practical barriers. The availability of safe abortion services, particularly in rural and semi-urban areas, is seriously inadequate. The Medical Termination of Pregnancy Act requires that abortion be performed by a "registered medical practitioner," which in practice requires a doctor with specific training. The shortage of trained abortion providers, particularly in public health facilities in smaller cities and rural areas, means that many women who seek abortion are turned away or directed to private providers who charge high fees.

The stigma attached to abortion in Indian society, particularly for unmarried women, creates additional barriers even where services are legally available. Women seeking abortion often face judgmental treatment from medical providers, disclosure of the procedure to family members without consent, and counseling that is oriented toward discouraging abortion rather than supporting informed choice. The absence of proper counseling infrastructure that treats abortion as a legitimate healthcare choice rather than a last resort requiring justification perpetuates the normalization of unwanted pregnancy.

11.2 Son Preference and the Violence of Sex Selection

The phenomenon of sex-selective abortion, driven by the cultural preference for sons over daughters, has produced a severe distortion in India's sex ratio. The 2011 census recorded a child sex ratio of 914 girls per 1,000 boys for children up to six years of age, the worst recorded since Indian independence. Subsequent surveys showed improvement but the problem persists: son preference continues to distort conception and birth outcomes in ways that constitute, in

aggregate, a form of systematic violence against the girl child, a violence that begins before birth and that is rooted in the structural devaluation of female life in Indian culture.

Sex-selective abortion is specifically prohibited by the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994, commonly known as the PC-PNDT Act. The Act prohibits the use of diagnostic techniques to determine the sex of a fetus and the use of any material or method for sex selection. But enforcement has been deeply inadequate. The combination of high demand for sex selection in communities with strong son preference, the availability of ultrasound technology, and the willingness of medical providers to collude with families in conducting and communicating sex determination has made enforcement of the PC-PNDT Act extremely difficult.

The theoretical framework for analyzing sex-selective abortion is contested. A strict pro-choice feminist analysis holds that every woman has the right to choose to terminate a pregnancy for any reason, and that laws prohibiting sex-selective abortion violate reproductive autonomy. A feminist analysis oriented around structural justice holds that sex-selective abortion is not a free choice in the context of a society that systematically devalues daughters and imposes economic costs (through dowry) on their parents: it is a forced choice within a structure of constraints that the law and state policy should transform rather than accommodate.

Martha Nussbaum's capability approach provides a productive middle path: the question is not whether sex-selective abortion should be permitted but what conditions would need to change for the social preference for sons to disappear. Those conditions include: equal education and employment opportunities for daughters; the elimination of dowry; equal inheritance rights effectively enforced; equal care and nutrition for daughters; and a cultural transformation that values female children as much as male children. These structural changes are the genuine feminist response to son preference; the legal prohibition of sex-selective abortion is at most a stopgap that addresses the symptom without the cause.

11.3 Forced Sterilization and the Dark History of Population Control

The history of reproductive rights in India includes one of the most egregious programs of rights violation in post-independence history: the mass forced sterilization program during the Emergency period of 1975 to 1977. Under Prime Minister Indira Gandhi's government, and implemented with particular enthusiasm by her son Sanjay Gandhi, a target-based sterilization program was conducted in which government officials were required to meet numerical targets for sterilizations. The program disproportionately targeted men (vasectomies were the primary method) but also subjected women to sterilizations, and coercion was extensively documented. Cases of men being taken off trains and sterilized at gunpoint, of women being sterilized without consent during delivery in hospitals, and of entire communities being subjected to forced sterilization operations were reported from multiple states.

The Emergency-era forced sterilization program was a human rights catastrophe of the first order, and its political backlash contributed significantly to the defeat of the Congress government in the 1977 elections. But the legal accountability for the program was essentially

nil: no officials were prosecuted, no state compensation was provided to survivors, and no systematic reckoning with the violations was conducted.

The legacy of the Emergency sterilization program is relevant to contemporary reproductive rights in India because its memory has shaped community attitudes toward population programs, creating deep distrust of family planning services in specific communities, particularly Muslims and lower-caste communities, that has made the delivery of voluntary reproductive health services more difficult. The fear that family planning services are covert sterilization programs is a persistent concern in some communities, rooted in the lived memory of actual coercion.

More recently, concerns have been raised about the conditions under which sterilization "camps," government-organized mass sterilization events primarily targeting women, are conducted. In November 2014, thirteen women died following sterilization operations conducted at a government "camp" in Chhattisgarh under unhygienic conditions and with reused equipment. The incident raised fundamental questions about whether sterilization camps, even when nominally voluntary, involve genuine informed consent and adequate medical standards, or whether they reproduce the coercive and inadequate care dynamics that characterized the Emergency-era program.

CHAPTER TWELVE: HONOR VIOLENCE, KHAP PANCHAYATS, AND THE EXTRA-JUDICIAL REGULATION OF WOMEN'S BODIES

12.1 Honor Violence: Theoretical Framework

"Honor violence" is a category of gender-based violence in which violence, including murder, is committed by male relatives against a woman perceived to have violated community norms of sexual or relational conduct, with the specific motivation of restoring the "honor" of the family or community that has been "dishonored" by the woman's conduct. The concept of honor, as it operates in honor violence, locates a family's or community's social standing partly in the sexual conduct of its female members: a family that fails to control its women's sexuality is a family that has lost honor.

The theoretical analysis of honor violence has been the subject of extensive feminist philosophical engagement. Lama Abu-Odeh's analysis of honor crime in the Arab context, which has influenced scholarship on parallel practices in South Asian contexts, emphasizes the social function of honor: it operates as a system of reputational regulation that uses women's bodies as the terrain on which social status is contested. The violence that enforces honor norms is not merely the action of individuals acting from emotional states of shame or rage; it is a social institution, with its own rules, procedures, and practitioners.

In the Indian context, honor violence is associated particularly with khap panchayats in Haryana, Uttar Pradesh, and Rajasthan: community assemblies of dominant-caste elders that enforce social norms through collective decisions that can include the ordering of violence against women who have married outside caste norms, had consensual relationships with men of lower caste, or

otherwise violated the community's sexual code. The term "honor killing" is applied to murders ordered or endorsed by these community bodies.

In Shakti Vahini v. Union of India in 2018, the Supreme Court took serious notice of honor killings and the unlawful operations of khap panchayats. The Court ruled that it is unlawful and a violation of constitutional rights for community assemblies to meddle in marital affairs, especially when the marriage is between consenting adults. The right to life and personal liberty, which includes the freedom to select one's life partner, were reaffirmed as fundamental rights under Article 21. GOV.UK

The Shakti Vahini judgment was an important constitutional statement. But its implementation has been limited: khap panchayats continue to function in the regions where they have operated, and honor killings, while difficult to quantify because police often record them as suicide or accident, continue to be reported by human rights organizations and journalists from Haryana, Uttar Pradesh, and Rajasthan in particular.

The intersectionality dimension of honor violence is significant: while honor violence occurs across multiple caste communities, it is particularly associated with dominant-caste communities in specific regions, and its primary application is to punish women who enter relationships with men of lower caste or different religion. The honor concept is therefore not merely patriarchal but also casteist: the "honor" being protected is not merely the family's honor as a family but the community's honor as a caste group, and the specific violation being punished is most often the crossing of caste or religious boundaries.

12.2 The Love Jihad Narrative and Communalized Honor Violence

The "love jihad" narrative, promoted by Hindu nationalist organizations and increasingly mainstreamed in BJP political discourse, holds that Muslim men are engaged in a systematic, coordinated campaign to seduce and marry Hindu women with the purpose of converting them to Islam and producing Muslim children, thereby demographically undermining the Hindu majority. This narrative is empirically unsupported: there is no evidence of any such organized campaign, and the actual incidence of Hindu-Muslim inter-religious marriage in India is extremely low by any measure.

But the love jihad narrative has been operationalized into law in several BJP-governed states. Uttar Pradesh, Madhya Pradesh, Haryana, and Karnataka have all enacted "anti-conversion" or "anti-love jihad" laws that, in their application, primarily target inter-religious relationships involving Hindu women and Muslim men. These laws have been used by police and by Hindu nationalist vigilante groups to harass, arrest, and prosecute Muslim men who are in consensual relationships with Hindu women, and to coerce Hindu women into abandoning those relationships.

The feminist analysis of these laws is straightforward: they subordinate women's right to choose their own partners to the state's and community's claimed interest in regulating the religious composition of the population. They treat Hindu women as bearers of Hindu community identity whose sexuality must be controlled in the service of the community, rather than as autonomous

individuals whose choices are their own. The "love jihad" laws are honor violence institutionalized through the state.

Human Rights Watch documented in 2025 that Hindu extremist groups specifically targeted Hindu women and girls in interfaith relationships, filing police complaints against their Muslim partners, which police then acted upon without adequate evidence of coercion, and subjecting the women to pressure from family members, community groups, and police to abandon their relationships. The women's own choices were ignored or dismissed as evidence of "brainwashing" by Muslim men.

This pattern precisely replays the theoretical analysis of Patricia Williams and other critical race theorists on the intersection of race, gender, and sexuality: dominant group men treat the sexual choices of women from their own group as community property rather than individual right, and the state enforces this communal claim through the apparatus of law.

CHAPTER THIRTEEN: GENDER-BASED IMMIGRATION, STATELESSNESS, AND THE NRC

13.1 The National Register of Citizens and Gendered Exclusion

The National Register of Citizens exercise in Assam, completed in 2019 with the exclusion of approximately 1.9 million people from the register, has a specific and underanalyzed gender dimension. The NRC process required individuals to demonstrate their citizenship or the citizenship of their ancestors through documentary evidence. The documentation requirements were extensive and specific, requiring a combination of documents from designated lists.

Women, particularly rural women from lower-income and lower-caste backgrounds, were systematically more likely to lack the required documents for several structural reasons. Marriage certificates and birth certificates for women born before the legal requirements for registration became widely implemented are frequently absent. Women who migrate to their husband's village upon marriage, which is the norm in patrilocal family structures across most of Assam, face the specific problem that their pre-marriage documents are in their natal village and may bear their natal name rather than their married name, making the documentary chain difficult to establish. Women who have been widowed or abandoned by husbands may lack documents that were held by the husband. Illiterate women who have not engaged with bureaucratic documentation systems throughout their lives may simply not have the documentary trail that the NRC process required.

The consequence was that a disproportionate number of women were excluded from the NRC not because they are not Indian citizens but because the documentation required by the NRC process reflects male bureaucratic experiences of citizenship rather than the lived reality of women's relationship to state documentation. This is a specific form of gendered structural inequality in the citizenship documentation system that the NRC exercise exposed and deepened rather than addressed.

The combination of NRC exclusion and the lack of a legal pathway under the Citizenship Amendment Act for excluded Muslim women creates the specific scenario discussed in Part Eleven and Part Twelve: Bengali-speaking Muslim women who have been born and lived their entire lives in Assam, who lack specific documents because of the structural documentation disadvantages of poverty and patriarchal family structure, who are excluded from the NRC, and who have no legal pathway to regularize their status under the CAA because they are Muslim, face the prospect of statelessness in the country of their birth.

CHAPTER FOURTEEN: FEMINIST PHILOSOPHY AND THE DEMANDS OF TRANSFORMATIVE JUSTICE

14.1 What Is Transformative Justice for Women?

Transformative justice, as a concept in feminist theory and practice, goes beyond the reformist demand that existing institutions apply their stated principles more consistently. It requires the transformation of the structural conditions that produce inequality and enable violence: the economic structures that create women's dependence, the cultural norms that devalue women and normalize violence, the institutional cultures that treat women's complaints as less credible, and the political systems that exclude women's voices from the making of laws and policies that govern their lives.

The transformative justice framework draws on multiple feminist theoretical traditions. It draws from socialist feminism the insistence on economic transformation as the foundation of gender justice. It draws from radical feminism the analysis of patriarchy as a systematic social structure rather than a collection of individual prejudices. It draws from postcolonial feminism the insistence on the specific historical and cultural contexts of women's oppression and the rejection of universal solutions that ignore those contexts. And it draws from Black feminist thought, particularly the work of bell hooks, the analysis of the intersection of multiple systems of domination and the necessity of challenging them simultaneously rather than sequentially.

For India, the transformative justice agenda has several specific dimensions that build on the preceding analysis.

Economic transformation requires the elimination of the dowry system through effective enforcement of existing law combined with the development of alternative social insurance systems that provide genuine economic security for women in marriage and after marriage. It requires the universal implementation of equal inheritance rights under the Hindu Succession Act and equivalent provisions in other personal law systems. It requires the extension of legal protection to domestic workers and informal sector women workers. It requires the development of a universal childcare system that allows women to participate in the paid economy without bearing the entire burden of care work.

Cultural transformation requires the incorporation of gender equality education at every level of the curriculum, from primary school through professional training, designed not merely to

communicate legal rights but to challenge the cultural norms that underlie gender discrimination. It requires the transformation of the culture within police forces, medical institutions, and the judiciary, through mandatory training, performance accountability, and diverse representation. It requires the development of mass media content that challenges rather than reproduces gender stereotypes, a task that requires engagement with the film industry, television production, advertising, and digital content creation.

Institutional transformation requires the genuine implementation of the constitutional mandate of women's political representation through the Women's Reservation Act without the delayed implementation timeline. It requires the reform of the judiciary, particularly at the magistrate and sessions court levels where most gender-related cases are decided, through gender-sensitive appointment processes, mandatory training, and performance accountability for handling gender cases. It requires the genuine implementation of the POSH Act through systematic audit of ICC constitution and function, expanded jurisdiction to cover informal sector workers, and a well-resourced National Commission for Women with genuine investigative and prosecutorial power.

14.2 Feminist Jurisprudence and Constitutional Interpretation

The specific contribution of feminist jurisprudence to transformative justice is the insistence that the reading of constitutional rights must be informed by the actual experiences of women, particularly those at the intersections of multiple systems of oppression, rather than by the abstract principles of equality doctrine applied from a neutral (which is to say, from a patriarchal) standpoint.

This has specific implications for constitutional interpretation in India. The right to equality under Article 14, read through a feminist lens, demands not formal non-discrimination but substantive equality in fact: not merely that the law not explicitly discriminate against women, but that the law's actual operation produce equal outcomes. Laws that are formally neutral but that produce gendered outcomes because they are applied by a patriarchal institutional structure must be challenged under this substantive equality standard.

The right to life and personal liberty under Article 21, read through a feminist lens, demands the recognition of reproductive autonomy, bodily integrity, and freedom from intimate partner violence as fundamental rights that impose positive obligations on the state to protect and fulfill rather than merely negative obligations to refrain from direct violation. The marital rape exception is not merely a legislative gap to be filled: it is a positive violation of Article 21 that the state maintains by protecting through exception a husband's right to violate his wife's bodily integrity.

The freedom of religion under Article 25, read through a feminist lens, demands that the protection of religious community practices not extend to practices that directly violate the fundamental rights of women within those communities. The constitutional morality doctrine, properly applied, requires that the state's accommodation of religious community autonomy be conditioned on those communities' respect for women's equal rights within them. The idea that religious freedom creates a zone in which gender discrimination is permissible is constitutionally unsupportable under any serious reading of the Article 14 and 15 framework.

14.3 The International Dimension: CEDAW, the Beijing Platform, and Global Solidarity

India's obligations under CEDAW, the Beijing Platform for Action, the Sustainable Development Goals' gender equality framework, and the broader international human rights law create external accountability frameworks that provide resources for domestic feminist advocacy. The regular review process under CEDAW, the Universal Periodic Review under the Human Rights Council, and the reporting obligations under various treaty bodies provide regular opportunities for civil society organizations to present their own assessments of India's compliance with international standards and to receive international validation for their domestic claims.

The recent international developments are particularly relevant. India's performance on the justice dimension of the 2025-2026 Women, Peace and Security Index reflects uneven progress. The country scores 74.4 out of 100 on the absence of legal discrimination, indicating that while many formal barriers have been removed, gaps remain. Access to justice has slightly declined, pointing to persistent practical obstacles for women seeking legal redress. SCC Times

The Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women in 1995 and reaffirmed at Beijing+25 in 2020, provides the most comprehensive international framework for women's rights advocacy, covering education, healthcare, economic participation, political participation, violence, armed conflict, environmental issues, the girl child, and human rights. India's self-assessment of its Beijing+25 compliance, submitted to the United Nations, was sharply at odds with the assessments of civil society organizations and independent scholars.

The SDG framework, specifically Goal 5 on gender equality and Goals 3, 8, 10, and 16 on health, economic equality, reduced inequalities, and justice, creates measurable targets against which India's progress can be assessed and publicized. The consistent finding that India's SDG5 performance is significantly below its overall SDG performance, and below the performance of comparable countries in South Asia on specific gender indicators, provides concrete international evidence for the domestic feminist critique.

14.4 The Right to Food, Nutrition, and the Gendered Politics of Hunger

The intersection of gender and nutrition in India is one of the most disturbing dimensions of the broader human rights picture. Women and girl children in India face specific forms of nutritional deprivation that are rooted in cultural practices of differential feeding, in the increased nutritional demands of pregnancy and lactation that are not matched by increased food access, and in the combination of poverty and gender discrimination that means women eat last and least in many households.

The NFHS-5 data shows that anemia affects over 57 percent of women and 52.5 percent of children under five years of age. Anemia, particularly iron-deficiency anemia, is both a consequence and a cause of gender inequality: it is a consequence because women's nutritional deprivation is rooted in gender discrimination, and it is a cause because the cognitive and

physical impairments associated with severe anemia limit women's economic productivity and educational achievement.

Maternal mortality, while improving, remains at levels that reflect the unequal value placed on women's lives in the Indian healthcare system. The maternal mortality ratio was 80 per 100,000 live births in 2024, according to the Women, Peace and Security Index data cited earlier. The geographical and caste dimensions of maternal mortality are severe: maternal mortality rates for Dalit women and women in rural areas are significantly higher than the national average. Childbirth, which should be a medically supported event with low risk of mortality, remains dangerous for millions of Indian women because the healthcare system fails to provide adequate antenatal care, skilled attendance at birth, and emergency obstetric care.

The Supreme Court's decade-long engagement with the right to food in the PUCL case, which has generated extensive directions to state governments on the implementation of food distribution schemes and mid-day meals, has had real impact on nutrition outcomes for children and for the poorest adults. But the gender-specific dimensions of nutritional deprivation have not been adequately addressed through the food rights jurisprudence, which has focused primarily on quantity and distribution rather than on the cultural practices of differential feeding that deprive women and girl children of an equal share of available food.

CHAPTER FIFTEEN: VIOLENCE, LAW, AND THE SYSTEM OF IMPUNITY: A SYNTHESIS

15.1 The Architecture of Impunity for Gender-Based Violence

The preceding chapters have documented, across multiple domains, a consistent pattern: the perpetration of severe gender-based violence combined with the systematic failure of legal accountability for that violence. This is not random: it is the product of a coherent architecture of impunity that is built into the structure of the Indian legal and institutional system at multiple levels.

The first layer of impunity is the legal layer: laws that explicitly or implicitly exempt specific categories of violence from prosecution, including the marital rape exception, the limitations on prosecution under AFSPA that enable security force sexual violence in conflict zones, and the personal law provisions that shield discriminatory family practices from constitutional challenge.

The second layer is the institutional layer: a police force that is culturally hostile to rape complainants, a prosecution service that lacks the skills and resources to handle gender cases effectively, a judiciary that applies rape mythology in evidence assessment, and medical institutions that fail to provide adequate forensic examination or victim support.

The third layer is the social layer: cultural norms that define sexual violence as shameful for the victim rather than the perpetrator, that treat family honor as more important than individual rights, and that reward silence and punish disclosure.

The fourth layer is the political layer: a governing formation that draws its electoral base significantly from communities and social groups whose dominance is maintained through patriarchal structures, and that therefore has structural incentives to maintain the architecture of impunity rather than dismantle it.

These four layers interact and reinforce each other. The legal impunity makes the institutional failure easier to maintain; the institutional failure reduces the cost of perpetration, which reinforces the social normalization; the social normalization reduces the political pressure for reform; and the political calculation preserves the legal impunity.

Breaking this architecture requires simultaneous intervention at all four levels. Legal reform alone, without institutional reform, produces laws that exist on paper without changing outcomes. Institutional reform alone, without legal reform, runs up against the explicit or implicit legal protections for impunity. Social transformation alone, without legal and institutional change, is too slow and too uncertain to provide timely protection to the women currently being harmed. And political will without the other components is merely performative, as the record of government gender initiatives that produce schemes and slogans without structural change demonstrates.

15.2 The Specific Demand: A Feminist Agenda for Constitutional Change

The feminist agenda for constitutional change in India is extensive and well-developed in the scholarly literature. This section synthesizes the most important elements.

Constitutional amendment to explicitly include gender in the grounds of prohibited discrimination under Article 15, expanded to cover all forms of gender-based discrimination including discrimination rooted in gender identity and sexual orientation, would strengthen the constitutional basis for challenging a broader range of discriminatory laws and practices. The current Article 15 prohibits discrimination on grounds of "sex," which the courts have interpreted to include gender but which could be made more explicit and comprehensive.

Constitutional amendment to add a right to reproductive autonomy to Article 21's right to life and personal liberty, explicitly protecting the right of all persons to make decisions about their own bodies, sexual and reproductive lives, and family formation without state interference or third-party consent requirements, would provide a constitutional basis for challenging a range of restrictions on reproductive freedom including requirements for spousal consent for sterilization, which continue in some state-level policies.

Constitutional amendment to make the Directive Principles on equal pay, maternity benefits, and protection of women workers partially justiciable, by creating a right to progressive realization of these standards and a mechanism for courts to enforce reasonable measures of implementation, would strengthen the constitutional framework for economic gender justice beyond the narrow framework of non-discrimination.

The complete elimination of the personal law exception from the constitutional framework, replacing it with a provision mandating that personal law systems applied through Indian courts

must comply with the fundamental rights guarantees of Part III, would not require the abolition of diverse personal laws but would ensure that those laws, in their application through Indian courts, cannot be used to deny women the fundamental rights to equality and dignity that the Constitution guarantees to all persons.

15.3 The Jurisprudence of the Body: Toward a Theory of Sexual Citizenship

The concept of sexual citizenship, developed by feminist political theorists including Diane Richardson and Nicola Gavey, offers a productive framework for synthesizing the various dimensions of women's rights analysis developed in this Part. Sexual citizenship refers to the full set of rights, recognition, and resources required for persons to exercise autonomous agency in their sexual and reproductive lives: rights to physical safety and freedom from sexual violence; rights to equal legal treatment in marriage and family law; rights to access reproductive healthcare; rights to determine one's own sexual and relational choices; and rights to receive state protection for the exercise of these choices.

In India, married women have limited sexual citizenship: they lack the right to refuse sexual access by their husbands, they face legal and social obstacles to ending marriages that are harmful to them, and they are subjected to social norms that treat their sexual behavior as the property of their husbands and families. Dalit women have further limited sexual citizenship: they face specific sexual vulnerability rooted in caste hierarchy, and their access to legal remedies when violated is severely constrained by institutional caste bias. Women in conflict zones, particularly in Kashmir, have the most limited sexual citizenship of all: they face sexual violence by security forces operating under legal immunity, without any effective avenue for justice or accountability.

The concept of sexual citizenship connects individual rights to systemic analysis: it asks not merely whether specific laws protect specific rights but whether the overall system of law, institutions, and social norms creates the conditions within which women can exercise full agency in their sexual and reproductive lives. By this standard, India's sexual citizenship framework fails the majority of its women.

The philosophical foundation of sexual citizenship draws on the political philosophy of recognition, particularly the work of Axel Honneth. Honneth distinguishes three forms of recognition: love, which is the recognition of the particular individual as a valued being by intimate others; rights, which is the recognition of the individual as a bearer of equal rights in the public sphere; and solidarity, which is the recognition of the individual's particular contributions and characteristics as valuable to the social whole. Women in India who face gender-based violence experience the failure of recognition at all three levels: the violence itself is a denial of intimate recognition; the failure of legal accountability is a denial of rights recognition; and the cultural normalization of violence and the social stigma attached to victimhood is a denial of social solidarity.

Honneth argues that the struggle for recognition is the motive force of social progress: people resist domination not merely because it harms their material interests but because it denies their recognition as full human persons. The women's movement in India, from the 1970s campaigns

against custodial rape through the Nirbhaya protests of 2012 to the RG Kar protests of 2024, can be understood through this framework as a sustained struggle for recognition: a refusal to accept the cultural and legal denial of full personhood that the architecture of impunity expresses.

CONCLUDING COMMENTARY ON PART TWELVE

Part Twelve has traversed a vast and consequential terrain, from the theoretical foundations of feminist jurisprudence through the specific constitutional architecture of women's rights in India, through the detailed analysis of sexual violence, marital rape, the caste-gender intersection, personal law discrimination, workplace harassment, domestic violence, technology-facilitated violence, political representation, reproductive rights, honor violence, and the gendered dimensions of citizenship and displacement.

The central argument of this Part can be stated in five propositions.

First, India's gender rights deficit is structural and systematic rather than incidental. The violations documented across these fifteen chapters are not aberrations from a basically rights-respecting system but consistent features of an institutional architecture that was built from patriarchal foundations and has not been fundamentally transformed despite significant formal reform. The marital rape exception, the caste-gender violence impunity, the POSH Act's inadequate implementation, the personal law discriminations, and the political representation deficit are all features of the same underlying structure.

Second, intersectionality is the indispensable analytical lens for understanding Indian women's rights. Gender oppression in India does not operate in isolation from caste, class, religion, and geography: it is intensified and specifically configured by those intersections. Any analysis that ignores the specific situation of Dalit women, Muslim women, Adivasi women, women in conflict zones, and women in the informal economy is an analysis that serves the interests of dominant groups rather than the most vulnerable women.

Third, formal legal reform is necessary but insufficient. India has extensive formal rights guarantees and has enacted significant reform legislation in the criminal law, family law, and workplace domains. But the gap between formal rights and lived reality is enormous, and it will not be closed by additional legislation alone. Institutional transformation, cultural change, and economic transformation are equally necessary.

Fourth, women's political representation is a prerequisite for comprehensive rights reform. The systematic underrepresentation of women in legislative bodies means that the laws and policies that govern women's lives are made primarily by men who have structural interests in the maintenance of patriarchal arrangements. The Women's Reservation Act's delayed implementation timeline is a political act that reveals this interest.

Fifth, India's obligations under international law, including CEDAW, the ICCPR, the ICESCR, and customary international law norms on women's rights, create enforceable obligations that

domestic civil society can and must invoke in advocacy before domestic courts and in engagement with international human rights mechanisms. The resources of international human rights law are tools for feminist advocacy that must be used more systematically and more ambitiously.

Part Thirteen of this textbook will turn its analytical gaze to the relationship between economic policy and human rights, examining the specific ways in which India's development model has produced rights violations, the relationship between privatization, labor rights, and economic exclusion, and the framework of economic rights under domestic and international law.

PART THIRTEEN: THE POLITICAL ECONOMY OF RIGHTS DEPRIVATION - DEVELOPMENT, LABOUR, LAND, AND THE ARCHITECTURE OF ECONOMIC EXCLUSION

PREFATORY NOTE TO PART THIRTEEN

The preceding twelve parts of this textbook have built, chapter by chapter, a comprehensive anatomy of human rights violation in India. They have traced the philosophical foundations of rights theory and applied those foundations to the concrete realities of Indian governance. They have excavated the historical roots of the crisis, the constitutional architecture that enables violation as much as it prohibits it, the specific suffering of Kashmir, the structural degradation of Dalits, the systematic persecution of religious minorities, the ongoing war against civil society and the press, the regional hegemony India exercises over its smaller neighbours, the use of counterterrorism law as an instrument of political silencing, and, in the most recent part, the vast terrain of gendered violence and discrimination.

Part Thirteen turns its analytical gaze to a domain that is often treated separately from the civil and political rights framework but that is, in the experience of the vast majority of India's population, the most immediately and constantly felt dimension of their oppression. This is the domain of economic rights: the right to work and to just and favourable conditions of work, the right to an adequate standard of living, the right to the highest attainable standard of health, the right to education, the right to food, the right to housing, and the right to social security. These rights are codified in the International Covenant on Economic, Social and Cultural Rights, to which India is a party, and are given partial domestic expression in the Directive Principles of State Policy in Part IV of the Indian Constitution and in the expansive judicial interpretation of Article 21.

The analytical claim of this Part is simultaneously structural and philosophical. At the structural level, it argues that India's development model, specifically the variant of liberalised capitalism that has dominated Indian economic policy since 1991 and that has taken an increasingly aggressive pro-corporate, anti-labour, and anti-poor form under the Modi government, is itself a systematic generator of human rights violations. These violations are not incidental failures of

implementation or unfortunate side effects of growth. They are the predictable outcomes of a model that distributes the gains of economic expansion overwhelmingly upward while distributing its costs overwhelmingly downward, that dismantles labour protections in the name of flexibility, that destroys community land relationships in the name of development, that privatises public services in the name of efficiency, and that treats the economic rights of the poor as obstacles to investment rather than as claims on the state that cannot be compromised.

At the philosophical level, this Part engages with the longstanding debate in jurisprudence and political philosophy about the status of economic and social rights. The claim that economic rights are somehow less fundamental, less justiciable, or less urgently required than civil and political rights is one that has been challenged from multiple intellectual traditions, and this Part traces those challenges with care. Drawing on the capabilities approach of Amartya Sen and Martha Nussbaum, the relational theory of poverty developed by Thomas Pogge, the neo-Marxist analysis of exploitation and structural inequality, and the jurisprudential work of scholars like Katharine Young, Jeff King, and Sandra Fredman on socioeconomic rights adjudication, this Part constructs a rigorous theoretical basis for treating India's failure to realize economic rights as a genuine human rights failure rather than a mere developmental disappointment.

The Part is organised around fifteen chapters. The first three establish the theoretical and legal foundations of economic rights. The next six examine specific domains of economic rights violation in India, including labour rights and the new Labour Codes, the informal economy, bonded labour and modern slavery, the gig economy, privatisation and public services, and land rights and displacement. The following three chapters examine the rights to food, health, and education as specific justiciable claims that the Indian state has systematically failed to meet. The final three chapters examine the intersection of economic discrimination with caste and religious identity, India's international economic obligations and its failures, and the political economy of violation, asking who benefits from the systematic maintenance of rights deprivation.

Throughout, this Part maintains the commitment to analytical rigour, documentary precision, and philosophical depth that has characterised the preceding twelve parts. It names things by their right names. It does not pretend that poverty is merely an unfortunate circumstance when it is the product of deliberate policy choices that privilege some and impoverish others. It does not accept the framework in which India's human rights record is assessed primarily by its formal legal texts while the lived experience of its poor, its workers, its Dalit labourers, its Adivasi communities, its urban informal settlers, and its hundreds of millions of people who cannot access adequate healthcare, food, education, or legal protection, is treated as a separate and lesser matter. The suffering of those people is the central fact of this analysis, and every theoretical and legal argument in this Part is anchored in that fact.

CHAPTER ONE: ECONOMIC RIGHTS AS HUMAN RIGHTS - THEORETICAL AND JURISPRUDENTIAL FOUNDATIONS

1.1 The Historical Subordination of Economic Rights and Its Philosophical Costs

The division of human rights into two categories, civil and political rights on one hand and economic, social, and cultural rights on the other, embodied in the two International Covenants of 1966, was not a neutral taxonomic decision. It was a political compromise shaped by the Cold War confrontation between Western liberal democracies, which emphasised civil and political rights as the core of the human rights project, and Soviet bloc states, which emphasised economic and social rights as the genuine foundation of human welfare. The result of this compromise was not merely a formal division of rights into two documents but the implicit creation of a hierarchy, a hierarchy that treated civil and political rights as immediately enforceable, justiciable, and genuinely obligatory, while treating economic, social, and cultural rights as aspirational goals to be progressively realised subject to available resources.

This hierarchy has been enormously consequential for billions of people around the world, and nowhere more so than in India. The formal legal framework of the Indian Constitution reflects the same division: civil and political rights are placed in Part III as enforceable Fundamental Rights, while economic and social objectives are placed in Part IV as non-justiciable Directive Principles. The philosophical rationale offered for this division by the framers was resource constraint: the state could not be held immediately liable for failing to provide every citizen with food, shelter, health, and education because providing these things required resources that a newly independent and poor state did not possess. The framers were not wrong that resources mattered. But in placing economic rights beyond judicial reach, they created a constitutional architecture in which the most powerful mechanism for rights enforcement, the courts, was categorically excluded from the domain where rights deprivation was most severe and most common.

The philosophical critique of this exclusion has been developed most powerfully in the work of Henry Shue, whose 1980 work on basic rights established that the distinction between negative rights, which require only state abstention, and positive rights, which require state action, does not map onto the distinction between civil and political rights and economic and social rights in the way that the hierarchy assumes. Every civil and political right has positive dimensions: the right to a fair trial requires the state to create and fund courts, train and pay judges, provide legal aid, and maintain the administrative infrastructure of justice. The right to freedom from arbitrary arrest requires the state to create, train, fund, and discipline a police force that respects those rights. These are massively expensive obligations. The claim that economic rights are uniquely expensive and therefore uniquely difficult to enforce is not philosophically sustainable.

The capabilities approach of Amartya Sen and Martha Nussbaum offers a different and more powerful philosophical grounding for economic rights. Sen, in his 1999 work Development as Freedom, argued that the proper goal of development is not the increase of GDP or income as such but the expansion of what he calls substantive freedoms, the real opportunities that people have to live lives they have reason to value. On this framework, a person who lacks access to adequate nutrition, who has no access to healthcare, who cannot read or write, who lives in perpetual fear of eviction, and whose livelihood depends entirely on the arbitrary decisions of a landlord or employer, is not free in any meaningful sense regardless of the formal legal freedom

they enjoy. Development understood as freedom expansion requires precisely the realisation of economic, social, and cultural rights.

Nussbaum's version of the capabilities approach, developed in her 2000 work Women and Human Development and her 2006 work Frontiers of Justice, provides a more determinate list of central human capabilities that must be secured for a person to live a life of human dignity. Among these central capabilities are bodily health, which includes adequate nourishment and shelter; bodily integrity, which includes freedom of movement and security against violence; senses, imagination, and thought, which require adequate education; emotions and social affiliation; and material control over one's environment, including the ability to hold property and seek employment on equal terms. Each of these capabilities corresponds to a cluster of economic and social rights. When the state fails to secure these capabilities for its poorest citizens, it fails not merely a development target but a fundamental obligation of justice.

Thomas Pogge's relational theory of global justice, developed in his 2002 work World Poverty and Human Rights, provides yet another philosophical foundation for treating economic rights deprivation as a genuine human rights violation. Pogge argues that the violation of human rights is not confined to direct state action against individuals but includes the institutional imposition of social arrangements that foreseeably produce severe deprivation. On this account, a state that maintains land tenure systems that predictably generate mass landlessness, labour laws that predictably generate mass informality and insecurity, health systems that predictably deny adequate care to the poor, and educational systems that predictably reproduce class and caste disadvantage, violates the economic rights of those who suffer these deprivations even if no individual official is making a specific decision to harm any particular person. The violation is structural and institutional, and Pogge's framework insists that structural violations are genuine violations.

1.2 The International Legal Framework: ICESCR, General Comments, and India's Obligations

The International Covenant on Economic, Social and Cultural Rights, which India ratified in 1979, establishes legally binding obligations for India in relation to a comprehensive range of economic, social, and cultural rights. These include the right to work and just and favourable conditions of work under Articles 6 and 7, the right to form and join trade unions and the right to strike under Article 8, the right to social security under Article 9, protection of the family and of mothers and children under Article 10, the right to an adequate standard of living including adequate food, clothing, and housing under Article 11, the right to the highest attainable standard of physical and mental health under Article 12, and the right to education under Articles 13 and 14.

The obligations under the ICESCR are framed around the concept of progressive realisation, as articulated in Article 2(1): each state party undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant by all appropriate means, including particularly the adoption of legislative measures. This framework of progressive realisation has sometimes been misread as

creating only weak or aspirational obligations, but the UN Committee on Economic, Social and Cultural Rights, which monitors compliance with the ICESCR, has consistently clarified that progressive realisation imposes immediate obligations as well as obligations of progressive improvement.

The Committee's General Comment 3, adopted in 1990, clarified that progressive realisation does not eliminate all immediate obligations. Immediately applicable obligations include the guarantee of non-discrimination in the enjoyment of all Covenant rights, the obligation to take deliberate, concrete, and targeted steps toward full realisation, and the obligation to avoid retrogressive measures, meaning deliberate steps that reduce the level of rights enjoyment already achieved. These immediate obligations are particularly significant for evaluating India's conduct because, as this Part will document, Indian economic policy under the current government has in multiple domains taken retrogressive steps: dismantling labour protections, reducing public expenditure on health and education as a proportion of GDP, weakening tenant and land rights, and abolishing the Mahatma Gandhi National Rural Employment Guarantee Act provisions that provided a minimum income floor to the rural poor.

The Committee's General Comment 9, on the domestic application of the Covenant, clarified that the rights in the ICESCR must be made justiciable. The Committee noted that appropriate legal remedies, or legal accountability, is an important element of the obligation to ensure full realisation of Covenant rights. This is directly relevant to India's constitutional framework, which denies justiciability to most of the Directive Principles that correspond to ICESCR rights. The Supreme Court's expansive interpretation of Article 21 has partially bridged this gap, but it has done so in a way that depends on judicial initiative and is therefore inconsistent, unpredictable, and accessible only to those who can navigate the Supreme Court's public interest litigation jurisdiction.

India has not ratified the Optional Protocol to the ICESCR, which was adopted in 2008 and entered into force in 2013. The Optional Protocol establishes an individual complaints mechanism that would allow persons in India whose ICESCR rights have been violated to bring communications before the Committee. India's refusal to ratify the Optional Protocol is consistent with its broader pattern of resisting international human rights accountability mechanisms, including its failure to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court. The refusal specifically denies India's workers, farmers, Dalit communities, and urban poor access to an international accountability mechanism that could supplement the inadequate domestic remedies available to them.

The UN Committee on Economic, Social and Cultural Rights reviewed India's compliance in its 2019 Concluding Observations, which represent the most recent comprehensive assessment of India's performance. The Committee expressed concern about the high level of poverty and inequality in India, the disproportionate impact of poverty on scheduled castes, scheduled tribes, religious minorities, and women, the high proportion of workers in the informal economy without social security coverage, the persistence of bonded labour, the high rates of child labour, the inadequacy of minimum wages, the barriers to access healthcare for the poor, the high levels of malnutrition, the inadequacy of public spending on education, and the discrimination faced by

minority communities in access to education. The Committee's concerns track the analysis of this Part with remarkable comprehensiveness, though the deterioration of the situation since 2019 has rendered even those concerns somewhat understated.

1.3 The Capabilities Approach and the Measurement of Economic Rights Deprivation

One of the most significant practical contributions of the capabilities approach to human rights analysis is its insistence that the measurement of rights deprivation cannot rest on income data alone. Sen's argument that income is a means to capability, not an end in itself, has generated a rich literature on multidimensional measures of poverty and deprivation that capture more accurately the actual conditions of people's lives. The Oxford Poverty and Human Development Initiative's Multidimensional Poverty Index, which measures deprivation across health, education, and living standard dimensions, provides a more complete picture of rights deprivation than GDP per capita or even the standard international poverty line.

The MPI data for India is simultaneously encouraging in its trend direction and deeply alarming in its current magnitude. India made significant reductions in multidimensional poverty between 2015 and 2021, reducing the proportion of the population classified as multidimensionally poor from approximately 25 percent to approximately 15 percent. These improvements, driven primarily by government welfare programs including the Pradhan Mantri Ujjwala Yojana cooking gas scheme, the Swachh Bharat toilet construction program, and the Jan Dhan financial inclusion initiative, are real and represent genuine improvements in the lives of millions of people.

But 15 percent of India's 1.45 billion people is still approximately 220 million people living in multidimensional poverty. This population faces deprivations not merely in income but in nutrition, child mortality, years of schooling, attendance at school, cooking fuel, sanitation, drinking water, electricity, housing, and household assets. These are not abstract statistics. Each dimension of deprivation represents a specific failure to realise a specific economic or social right: the right to health is violated by malnutrition and child mortality; the right to education is violated by inadequate schooling; the right to an adequate standard of living is violated by inadequate housing, sanitation, and clean water.

Furthermore, the distribution of multidimensional poverty in India is not random. It follows the fault lines of caste, ethnicity, religion, and geography with striking precision. The scheduled tribes population has a multidimensional poverty rate of approximately 50 percent. The scheduled castes population has a rate of approximately 33 percent. The Muslim minority has a rate substantially above the national average. The rural population of Jharkhand, Uttar Pradesh, Madhya Pradesh, and other central Indian states has rates that dwarf those of urban areas in more prosperous states. These distributions confirm that the economic rights deprivation is not a residual problem of overall underdevelopment but a structural product of the specific ways in which India's economy distributes its gains and its losses across the social hierarchy.

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1.4 Justiciability and the Adjudication of Economic Rights: Theoretical Debates

The theoretical debate about the justiciability of economic and social rights has evolved substantially over the past three decades, driven by the constitutional experience of multiple countries that have incorporated these rights into enforceable constitutional frameworks. The South African Constitution of 1996, which includes justiciable socioeconomic rights to housing, healthcare, food, water, and social security, has generated the richest body of judicial experience with the adjudication of positive rights. The Constitutional Court's decisions in cases like Government of the Republic of South Africa v. Grootboom, decided in 2000, and Minister of Health v. Treatment Action Campaign, decided in 2002, have established approaches to socioeconomic rights adjudication that are widely studied in comparative constitutional law.

Katharine Young's work on the adjudication of economic and social rights, developed in her 2012 book Constituting Economic and Social Rights, provides the most comprehensive theoretical framework for understanding both the possibilities and the limitations of judicial enforcement of these rights. Young distinguishes between what she calls the weak thesis of justiciability, which holds that courts can enforce a minimum core of economic and social rights, and the strong thesis, which holds that courts can engage with the full range of those rights through reasonableness review of governmental policy. She argues that both approaches are possible and that the choice between them involves genuine trade-offs between judicial effectiveness and democratic legitimacy.

Jeff King's 2012 book Judging Social Rights argues that courts are more capable of adjudicating social rights than traditional objections to justiciability suggest. King identifies multiple institutional strategies that courts have successfully used to enforce social rights without usurping the democratic prerogatives of legislatures: minimum core obligations that represent a non-derogable floor of protection; reasonableness review that examines whether the state has a coherent and effective plan for progressive realisation; and structural injunctions that mandate specific reforms without dictating the specific means. Indian courts, particularly the Supreme Court, have actually deployed all of these strategies in their public interest litigation jurisprudence, though inconsistently and with variable effectiveness.

Sandra Fredman's work on human rights transformation, particularly her 2008 book Human Rights Transformed, argues for a four-dimensional approach to positive rights adjudication that focuses on capability, equality, participation, and dignity. This approach is particularly relevant to India because it insists that rights adjudication cannot stop at the level of formal provision but must engage with the actual capacity of people to exercise those rights. A right to food that exists in law but is undermined by a public distribution system riddled with corruption is not a right in any meaningful sense. A right to education that guarantees school enrollment but does not address the quality of teaching, the availability of materials, or the cultural barriers to learning is a hollow promise. Fredman's framework demands more: it demands that rights analysis track the actual experiences of the most marginalised, asking not merely whether the law exists but whether it transforms the real conditions of people's lives.

India's judicial experience with economic rights, while impressive in some respects, has fallen far short of this transformative ideal. The Supreme Court's public interest litigation jurisdiction,

developed from the early 1980s onward through cases like Hussainara Khatoon (1979), which addressed undertrial prisoners' rights to speedy trial, and Olga Tellis (1985), which addressed the right to livelihood of pavement dwellers, has been genuinely creative and has produced some landmark expansions of rights. But the enforcement of the Court's directions has been chronically inadequate, and the systemic changes required to genuinely realise economic rights have repeatedly proved beyond the Court's institutional reach.

1.5 Neo-Marxist Analysis and Structural Exploitation

The Marxist and neo-Marxist traditions offer analytical tools that mainstream rights theory often lacks, particularly for understanding the relationship between economic structure, class power, and rights deprivation. While this textbook does not operate exclusively within a Marxist framework, it would be intellectually incomplete to ignore the insights that this tradition offers.

Marx's analysis of exploitation, the extraction of surplus value from labour through the institution of the wage relation, provides a framework for understanding why workers in India earn wages that leave them unable to meet their basic needs even when they work full time. The minimum wage in India, across different state and sector determinations, remains dramatically below any plausible living wage. According to data cited in the India labour law guides reviewed for this Part, India's average minimum wage in 2021 stood at approximately ninety-five United States dollars per month, substantially below comparable Southeast Asian economies. This minimum wage reflects not a neutral market equilibrium but a political settlement in which the bargaining power of labour is systematically suppressed through legal restrictions on union organisation, the maintenance of vast labour reserves in the informal sector, and the deliberate policy choice to maintain low wages as a competitive advantage in attracting foreign investment.

Antonio Gramsci's concept of hegemony, the way in which the dominant class maintains its position not merely through coercive force but through the manufacture of consent, is directly applicable to India's economic rights situation. The discourse of development, of aspiration, of economic nationalism, and of meritocracy, which dominates Indian political culture especially in its Hindu nationalist variant, functions as a hegemonic narrative that naturalises existing economic arrangements and delegitimises challenges to them. The poor are told that their poverty is temporary, that economic growth will lift all boats, that the state is working hard for them, that critics who challenge the government's development model are anti-national. This narrative makes it more difficult to mobilise politically around economic rights claims and provides ideological cover for policies that deepen inequality.

Erik Olin Wright's work on class structure and inequality, particularly his 2010 book Envisioning Real Utopias, provides a framework for thinking about the relationship between structural economic inequality and rights deprivation that moves beyond both liberal individualism and orthodox Marxism. Wright distinguishes between the exploitation of workers, the exclusion of marginalised groups from access to productive resources, and the oppression of subordinated communities through multiple interlocking hierarchies. All three processes are operative in India. Workers are exploited through the wage relation. Dalits, Adivasis, and Muslims are excluded from access to land, capital, education, and formal employment in ways that go beyond mere

class disadvantage. And women, minorities, and lower-caste communities are oppressed through the intersection of class exploitation with gender hierarchy and caste hierarchy.

CHAPTER TWO: INDIA'S DEVELOPMENT MODEL - GROWTH WITHOUT JUSTICE

2.1 The Liberalisation Turn and Its Social Consequences

India's economic liberalisation, initiated in 1991 under Prime Minister Narasimha Rao and Finance Minister Manmohan Singh in response to a balance of payments crisis, represented a fundamental reorientation of India's economic strategy. The Nehruvian mixed economy, which had maintained a large public sector, protected domestic industry behind high tariff walls, subjected private investment to extensive state regulation through the licence raj, and prioritised heavy industrialisation, was progressively dismantled in favour of a more market-oriented model that reduced tariffs, deregulated private investment, privatised public enterprises, invited foreign direct investment, and reoriented government economic management around fiscal discipline and monetary stability.

The growth record of the liberalised Indian economy has been, by macroeconomic measures, impressive. India's GDP growth averaged approximately seven percent per year through much of the 1990s and 2000s, making it one of the fastest-growing major economies in the world. The Indian middle class expanded dramatically. New industries, particularly in information technology and services, created millions of new jobs and generated significant export earnings. Extreme poverty, measured by the international poverty line, declined substantially over this period. These achievements are real and should not be dismissed.

But the distribution of these gains, and the costs associated with the liberalisation model, tell a very different story from the triumphalist narrative of Indian economic success. Thomas Piketty and Lucas Chancel's 2019 research on inequality in India, using income tax data that reveals patterns obscured in household survey data, found that the share of income going to India's top one percent increased from approximately six percent in 1980 to approximately twenty-two percent by 2014, and that India's income inequality in the 2010s was at its highest level since the 1920s. The Oxfam India Wealth Reports have consistently shown that the share of wealth held by the top one percent of the population exceeds forty percent of the national total, while the bottom fifty percent holds less than three percent. The India Inequality Report produced by Oxfam India in 2022 documented what it called a widening inequality crisis, noting that the billionaire wealth in India had more than doubled during the pandemic years from 2020 to 2022, when tens of millions of Indians lost their livelihoods.

The relationship between India's development model and its human rights failures is not incidental but structural. The specific choices made in the design of the liberalisation model, including the decision to prioritise fiscal consolidation over social spending, the decision to open capital markets while maintaining restrictions on labour migration, the decision to offer corporate tax concessions while underfunding public services, and the decision to treat

environmental and social protections as obstacles to investment, have predictably generated the pattern of growth with inequality and deprivation that India exhibits. These are not accidental failures but the predictable consequences of a political economic model designed to serve the interests of capital over the claims of labour, and the interests of the urban middle class over the needs of the rural poor.

2.2 The Modi Economy: Acceleration and Deepening

The Modi government that came to power in 2014 did not initiate India's liberalisation trajectory but has substantially accelerated and deepened it, while adding a specifically Hindu nationalist dimension that has created new intersections between economic policy and religious discrimination. The economic program of the Modi government, marketed under various brand names including Make in India, Atmanirbhar Bharat (Self-Reliant India), and Digital India, has been characterised by an aggressive promotion of private investment, a confrontational stance toward labour rights and environmental protections, a dramatic increase in the use of government machinery to benefit politically connected businesses, and a systematic reduction in the accountability mechanisms that might constrain corporate behavior.

The most dramatic and immediate economic shock of the Modi era was demonetisation, announced without warning on the evening of November 8, 2016, which cancelled eighty-six percent of India's currency in circulation at midnight, giving the population fifty days to exchange their old notes at banks. The stated purposes were to combat black money, counterfeit currency, and terrorism financing. The actual consequences were a severe economic contraction in the informal sector, massive job losses among daily wage workers, devastating impacts on small traders and farmers, a contraction of agricultural credit, and significant excess mortality. The Reserve Bank of India's own data, released in 2018, showed that 99.3 percent of the demonetised notes had been returned to banks, meaning that the claim about destroying black money was comprehensively falsified by the evidence.

The economic and human rights consequences of demonetisation fell overwhelmingly on the poor and the informal sector. Workers paid in cash, small traders, farmers, migrant labourers, and rural households without access to banking services suffered the most severe disruption. Several hundred people died in queues at banks and ATMs. Agricultural production was disrupted during the winter planting season. Informal lending networks collapsed, depriving small businesses of working capital. The economic contraction of the fourth quarter of 2016 and the first quarter of 2017 was significant, and independent economists, including former RBI Governor Raghuram Rajan, questioned whether the economic costs justified any plausible benefit.

The introduction of the Goods and Services Tax in 2017, while representing a necessary rationalisation of India's complex indirect tax structure, was implemented with a complexity and an inadequate preparation time that devastated small and medium businesses in the short term, particularly in the informal sector. The GST's registration and compliance requirements favoured larger formal businesses while imposing disproportionate administrative burdens on the small traders, artisans, and micro-enterprises that constitute the backbone of India's informal economy.

The economic impact of the COVID-19 pandemic, and specifically of India's response to it, represented perhaps the most severe economic rights catastrophe in independent India's history. The sudden national lockdown announced on March 24, 2020, gave India's estimated forty million internal migrants less than four hours notice before all public transportation was suspended, stranding them without work, money, food, or shelter in cities that had suddenly closed. Images of migrant workers walking hundreds of kilometres along highways, carrying their children and their few possessions, became the defining visual representation of the Indian state's complete indifference to the welfare of its most vulnerable citizens. Several hundred people died on these journeys. The economic contraction of 2020 was the most severe in India's post-independence history, with GDP contracting by approximately seven percent, while the informal sector contracted by far more.

The government's response to the economic emergency generated by the pandemic was, by international standards, remarkably limited. While governments around the world provided substantial income support, business relief, and expanded social protection, India's fiscal response was comparatively small relative to GDP, skewed toward credit guarantees rather than direct transfers, and poorly designed for reaching the informal workers who most needed support. The Mahatma Gandhi National Rural Employment Guarantee Act, which guarantees one hundred days of wage employment annually to any rural household that demands it, experienced a massive surge in demand during the pandemic, providing a crucial economic lifeline for rural households. The subsequent decision in 2026 to abolish this guarantee, driven by the BJP government's ideological hostility to public employment programs and its determination to depress agricultural wages, represents a retrogressive step that will deepen rural poverty and will be examined in detail later in this Part.

2.3 The Concentration of Corporate Power and Democratic Accountability

One of the most distinctive and troubling features of the economic landscape under the Modi government is the extraordinary concentration of corporate power, and specifically the apparent connection between political proximity to the BJP and business success. The Adani Group, whose chairman Gautam Adani has been identified by Forbes as one of the world's wealthiest individuals, expanded its business empire extraordinarily rapidly during the Modi years, acquiring assets in ports, airports, energy, defence, and media with what critics have described as strikingly favourable government treatment. The Hindenburg Research report of January 2023, which documented allegations of accounting fraud, stock manipulation, and money laundering by the Adani Group, triggered a brief but significant market panic and raised serious questions about corporate governance, regulatory oversight, and the independence of India's financial regulators.

The Supreme Court's handling of the Adani-Hindenburg matter was widely criticised as inadequate. The Court appointed a committee to investigate, but the committee's report largely exonerated the Adani Group on the basis of existing regulatory findings, without addressing the substantive allegations in the Hindenburg report. The Securities and Exchange Board of India, which should have been the primary investigator, was itself accused by the opposition of inadequate investigation and of conflicts of interest involving its chairperson. The episode

illustrated the broader pattern of India's corporate regulatory architecture functioning more as a facilitator of concentrated corporate power than as a genuine accountability mechanism.

The concentration of media ownership by corporations closely associated with the BJP government, documented extensively in Part Eleven of this textbook, is directly relevant to economic rights analysis. An independent media is a prerequisite for the accountability mechanisms through which economic rights violations can be documented, publicised, and challenged. When the major media outlets are owned by corporations that depend on government favour, and when independent journalists who investigate corporate-government connections are targeted with tax raids, defamation cases, and criminal charges, the ecosystem of accountability that might constrain economic rights violations is systematically degraded.

CHAPTER THREE: THE LABOUR LAW ARCHITECTURE - COLONIAL INHERITANCE AND CONTEMPORARY BETRAYAL

3.1 The Historical Development of Indian Labour Law

Indian labour law has a history that mirrors the broader pattern of colonial inheritance and post-colonial adaptation that characterises so many domains of Indian law. The earliest labour legislation in British India, including the Factories Act of 1881 and its successors, was enacted not primarily to protect workers but to regulate the conditions under which colonial capital could most efficiently exploit Indian labour without triggering social unrest. The political economy of colonial labour regulation was one in which the interests of British capital, both the British-owned factories in India and the British goods that competed with Indian manufacturing, shaped the content and enforcement of labour law in fundamental ways.

The post-independence Indian state inherited this labour law framework and substantially expanded it, driven by the socialist rhetoric of the Congress party and by the political necessity of accommodating the organised labour movement that had played a significant role in the independence struggle. Between independence and the 1980s, the Indian Parliament enacted a comprehensive body of labour legislation covering minimum wages, factory conditions, industrial disputes, provident fund contributions, maternity benefits, payment of gratuity, equal remuneration, contract labour, and many other aspects of the employment relationship. By the 1980s, India had approximately forty-four central labour laws and hundreds of state labour laws, creating a complex, overlapping, and frequently inconsistent legislative framework.

The complexity of this framework was, paradoxically, both a protective feature and an obstacle to protection. It was protective in the sense that multiple overlapping laws created multiple overlapping rights and multiple overlapping enforcement mechanisms, making it harder for employers to entirely evade their obligations through legal manipulation. It was an obstacle in the sense that the complexity itself deterred compliance, particularly by smaller employers, and that the enforcement agencies responsible for administering these multiple laws were chronically understaffed, underfunded, and, in many cases, corrupt. The gap between the formal rights created by this extensive legislative framework and the actual conditions experienced by most

Indian workers has been documented exhaustively by labour economists, sociologists, and human rights organisations.

The constitutional framework for labour rights combines fundamental rights guarantees with Directive Principles. Article 23 prohibits traffic in human beings, begar (forced labour without payment), and other similar forms of forced labour, and declares any violation a punishable offence. Article 24 prohibits the employment of children below the age of fourteen in factories, mines, or any other hazardous employment. These are enforceable fundamental rights, and the Supreme Court's interpretation of Article 23 in cases like Bandhua Mukti Morcha v. Union of India (1984) has extended its protection to all forms of bonded and forced labour. The Directive Principles in Articles 39, 41, 42, 43, and 43A express commitments to equal pay for equal work, just and humane conditions of work, maternity relief, a living wage, and worker participation in management. These Directive Principles have informed the development of labour legislation without being directly enforceable.

The formal employment relationship in India, with its significant body of statutory protections, covers only a small fraction of the actual workforce. The formal sector, comprising workers in registered establishments with formal employment contracts and statutory benefits, represents approximately ten percent of India's total workforce. The remaining ninety percent, nearly half a billion workers, are employed informally: as agricultural labourers, construction workers, domestic workers, street vendors, home-based workers, casual daily wage workers, and, most recently, gig workers. These informal workers are largely excluded from the protections of the formal labour law framework. They typically have no employment contracts, no social security coverage, no protection against arbitrary dismissal, no union representation, no access to grievance mechanisms, and no ability to enforce the minimum wage laws that nominally apply to them.

3.2 The Industrial Relations Architecture and Its Systematic Undermining

The Industrial Relations Code of 2020, one of the four Labour Codes that the Modi government enacted to consolidate and replace the previous body of central labour legislation, and which was brought into force on November 21, 2025, represents a systematic restructuring of the industrial relations framework in ways that weaken the position of workers relative to employers. This Code replaced three major pieces of legislation: the Trade Unions Act of 1926, the Industrial Employment (Standing Orders) Act of 1946, and the Industrial Disputes Act of 1947. Understanding what was changed requires understanding what the previous framework provided.

The Industrial Disputes Act of 1947 was the cornerstone of Indian industrial relations law. Among its most significant provisions was the requirement, in Chapter VB, that establishments employing one hundred or more workers obtain prior government permission before laying off, retrenching, or closing. This provision, which was introduced in 1976, was designed to prevent the use of mass layoffs as a tool of labour discipline and to ensure that the economic costs of retrenchment did not fall entirely on workers. Employers consistently complained that the provision made it impossible to respond efficiently to changing market conditions and that it deterred investment in labour-intensive manufacturing. Workers and unions argued that it

provided a critical protection against arbitrary dismissal in a labour market where alternative employment was chronically scarce and social safety nets were inadequate.

The Industrial Relations Code has raised this threshold from one hundred to three hundred workers for the requirement of prior government permission for retrenchment. This change, which the government characterises as modernisation and simplification, means that establishments employing up to two hundred and ninety-nine workers, which represents the overwhelming majority of Indian manufacturing establishments, can now retrench workers without any government permission. The protection that existed for workers in these establishments has been eliminated. The Code also provides that the government can raise this threshold further through a simple executive notification, without requiring new legislation, meaning the protection could be eliminated entirely for all but the largest establishments without any democratic deliberation.

The Code also institutionalises fixed-term employment, which had previously existed only as a limited exception to the norm of permanent employment. Under the Industrial Relations Code, employers can hire workers on fixed-term contracts of between six and eleven months for work that would otherwise be performed by permanent employees, without any obligation to convert those workers to permanent status or to renew their contracts. This provision, combined with the elimination of the Standing Orders requirement for establishments under three hundred workers, creates a legal framework for sustained casualisation of the workforce: workers can be employed on rolling short-term contracts indefinitely, excluded from the protections of the industrial disputes framework, and dismissed without the formalities of retrenchment compensation.

The Code's provisions on trade union recognition are also retrogressive. The previous Trade Unions Act allowed any seven workers to register a trade union, creating a multiplicity of unions in any given workplace. The Industrial Relations Code introduces a new concept of the sole negotiating union, which must represent at least fifty-one percent of the workers in an establishment to gain recognition as the bargaining agent. While rationalisation of the union landscape may serve some legitimate purposes, the practical effect of the fifty-one percent threshold in a context where employers routinely victimise union organisers and use contract and casual labour to dilute the union-able workforce is to make meaningful union recognition much harder to achieve.

The restrictions on strikes introduced by the Industrial Relations Code are particularly alarming from a human rights perspective. The Code requires workers to give a mandatory notice of sixty days before striking in any public utility service, and fourteen days in other establishments. Workers cannot strike while conciliation proceedings are in progress, which can last up to forty-five days, or while a case is before a labour tribunal. In effect, the legally permissible window for strike action, where workers can exercise their fundamental right to strike guaranteed by Article 19(1)(c)'s right of association, is dramatically narrowed. The International Labour Organisation's Committee on Freedom of Association has consistently held that restrictions on the right to strike must be limited to essential services in the strict sense, meaning services whose interruption would endanger the life, personal safety, or health of the whole or part of the population, and that a sixty-day notice requirement for strikes in public utility services is inconsistent with ILO Convention 87 on Freedom of Association, which India has not ratified.

The February 2026 general strike called by ten central trade union federations, which drew tens of millions of workers in protest against the Labour Codes, was one of the largest industrial actions in India's recent history. The strike was particularly significant because it crossed political affiliations: even unions affiliated with the BJP's labour wing, the Bharatiya Mazdoor Sangh, expressed reservations about specific provisions of the Labour Codes, though the BMS ultimately did not join the strike call. The government's response was to dismiss the concerns as politically motivated and to proceed with implementation. The abolition of the Mahatma Gandhi National Rural Employment Guarantee, which the World Socialist Web Site's February 2026 analysis noted occurred shortly after the Labour Codes were announced, deprived an additional tens of millions of rural workers of a critical income floor.

3.3 The Code on Wages and the Minimum Wage Failure

The Code on Wages, 2019, which was one of the first of the four Labour Codes to be enacted and came into force on November 21, 2025 together with the others, was intended to rationalise India's complex minimum wage framework. Prior to the Code, minimum wages were set separately for dozens of different scheduled employments by both central and state governments, creating a patchwork of different rates that varied enormously between states, between sectors, and between categories of worker. The Code introduces a concept of floor wage, set by the central government, below which no state can set its minimum wage.

The floor wage concept is potentially progressive in establishing a genuine national minimum below which wages cannot fall. But its effectiveness depends entirely on the level at which the floor is set, and on the enforcement mechanisms that back it up. The floor wage set under the Code has been criticised by labour economists and trade unions as inadequate to meet any reasonable definition of a living wage. A living wage, as defined by the Fair Wage Network and comparable organisations, is a wage that allows a worker and their family to meet their basic needs including food, housing, healthcare, education, and transportation, with some modest discretionary income. Indian minimum wages, including the new floor wage, fall dramatically short of this standard.

The enforcement of minimum wage law has historically been one of the most serious failures of the Indian state's labour protection system. Survey data consistently shows that a substantial proportion of Indian workers, particularly in agriculture, domestic work, and construction, are paid below the legally applicable minimum wage. The enforcement machinery, consisting of labour inspectors who are empowered to inspect workplaces and initiate prosecutions for violations, has been systematically weakened by years of underinvestment and by government policies that have reduced the frequency and scope of inspections in the name of improving the business environment. The Factories Act and other labour laws have been amended to replace mandatory inspections with self-certification by employers in many sectors, a reform that has the predictable effect of reducing enforcement where it is most needed.

The new Labour Codes maintain the basic architecture of minimum wage enforcement while introducing some changes that may further weaken it. The shift from a punitive model, in which violations result in criminal prosecution, to a compliance-first model, in which first-time violations result in monetary fines, removes the criminal deterrent that was theoretically

available to enforcement agencies. Given that prosecutions for minimum wage violations have always been relatively rare, removing the criminal sanction entirely for first offences may reduce the deterrent effect still further.

CHAPTER FOUR: THE FOUR LABOUR CODES - REFORM OR CORPORATE GIFT?

4.1 The Rhetoric of Modernisation and the Reality of Erosion

The consolidation of twenty-nine central labour laws into four Labour Codes, which the government announced as a historic modernisation of India's labour governance and which came into force on November 21, 2025, has been one of the most contested policy developments in recent Indian economic history. The government's narrative is that the previous patchwork of multiple overlapping laws created compliance burdens that deterred investment, reduced formal employment, and left the vast informal sector unregulated. Consolidation into four comprehensive codes, the narrative continues, will simplify compliance, reduce ambiguity, bring more workers within the formal regulatory framework, and ultimately create more and better jobs.

This narrative is not entirely without foundation. India's previous labour law framework was genuinely complex, with multiple laws covering overlapping subjects, inconsistent definitions of key terms like worker and employer, and multiple registration and compliance requirements that imposed real administrative costs. The consolidation has the potential to simplify some aspects of compliance and to create a clearer regulatory framework.

But the critical assessment of the Codes by labour economists, trade unions, international labour standards bodies, and human rights organisations reveals a pattern that goes well beyond simplification. The Codes systematically shift the balance of the employment relationship in favour of employers at the expense of workers. They increase the threshold for worker protections to apply, exclude larger categories of workers from protection, weaken union rights, restrict the right to strike, facilitate casualisation of the workforce, and reduce the enforcement machinery's capacity to hold employers accountable.

The World Socialist Web Site's February 2026 analysis described the Labour Codes as a savage attack on worker rights, characterising them as an assault on employment security through the institutionalisation of fixed-term employment, an erosion of retrenchment protections through the raising of the threshold for prior government permission, a frontal assault on collective bargaining through the fifty-one percent union recognition threshold, and a comprehensive weakening of strike rights. While the WSWS analysis comes from a particular political perspective, its legal and factual analysis of the specific provisions is largely consistent with the assessments of mainstream labour law scholars and the ILO's technical experts.

The East Asia Forum's April 2026 assessment of the gig economy provisions of the Codes noted that of the four Labour Codes that came into force in November 2025, only the Code on Social Security recognised gig and platform workers, while the remaining three, covering wages,

occupational safety, and industrial relations, excluded them entirely. This exclusion is strikingly inadequate given that India's gig workforce, estimated at approximately fifteen to twenty million workers in 2025 and projected to grow substantially, constitutes one of the most exploited segments of the workforce.

4.2 The Code on Social Security and Its Inadequacies

The Code on Social Security, 2020, represents the most ambitious component of the Labour Code reform in terms of coverage expansion. The Code extends social security coverage to previously excluded categories of workers including gig workers, platform workers, and unorganised sector workers. It creates mechanisms for establishing social security funds for these workers and mandates that platform aggregators contribute between one and two percent of their annual turnover to a social security fund that provides life and disability insurance, accident insurance, health, and maternity benefits to registered gig workers.

The intent of these provisions is progressive, and their enactment represents an acknowledgment that the gig economy workforce is large, vulnerable, and deserving of protection. But the East Asia Forum's April 2026 analysis identified critical structural weaknesses that prevent the Code from delivering on its promise.

The most important weakness is the eligibility condition. The draft central rules, published in December 2025, condition access to social security benefits on completing at least ninety days of engagement with a single aggregator annually, or one hundred and twenty days across multiple platforms. This threshold effectively excludes the most vulnerable segment of the gig workforce: workers who cannot consistently meet the ninety-day threshold because their work is sporadic, seasonal, or distributed across multiple platforms. As the East Asia Forum analysis noted, for a workforce where roughly half of delivery workers are migrants, the state-specific nature of the social security architecture amounts to structural exclusion: workers' entitlements expire at administrative boundaries.

The central worker registration system had enrolled fewer than three hundred and forty thousand of the country's twelve million gig workers as of mid-2025, representing less than three percent of the total gig workforce. This extraordinary gap between the formal framework and actual coverage reflects multiple obstacles: many gig workers are unaware of the registration system, the registration process requires documentation that many informal workers do not possess, there is no active outreach effort to reach workers, and the platforms themselves have financial incentives to keep their workforce uncovered, since coverage reduces their flexibility and increases their costs.

The comparison with international approaches is instructive. The European Union's 2024 Platform Work Directive establishes a presumption of employment for platform workers, placing the burden of proof on platforms to demonstrate that workers are genuinely self-employed rather than employees. This approach addresses the fundamental legal fiction underlying the gig economy business model, namely that workers who depend entirely on a single platform for their livelihood, work under the platform's algorithmic direction, and have no capacity to independently determine the price or terms of their services, are somehow genuinely independent

contractors rather than employees. India's approach accepts the aggregator model's definitional framework entirely, regulating a category of worker that it defines as separate from and lesser than employees, and providing a much thinner package of benefits accordingly.

4.3 Occupational Safety and the Death Toll of Neglect

The Code on Occupational Safety, Health, and Working Conditions, 2020, consolidates thirteen previous laws including the Factories Act of 1948, the Mines Act of 1952, and the Dock Workers (Safety, Health and Welfare) Act of 1986. It extends the scope of occupational safety regulation to all establishments employing ten or more workers, compared to the previous threshold of ten workers in factories with power and twenty workers in factories without power. This extension of coverage is potentially significant.

But the Code has been criticised for weakening several specific protections. The previous Factories Act required factories employing more than five hundred workers to maintain a Safety Committee with equal representation from workers and management. The new Code raises this threshold to two thousand workers, effectively eliminating the requirement for worker participation in safety governance for the large majority of manufacturing establishments. The ILO's Technical Advisory Committee has noted that worker participation in safety management is a critical element of effective occupational safety: workers are the best-placed people to identify workplace hazards, and excluding them from safety management creates an information gap that makes workplace injuries more likely.

India's occupational injury and mortality data is deeply inadequate, because reporting of workplace accidents is systematically incomplete. The Labour Bureau's official statistics on industrial accidents cover only factories registered under the Factories Act, which represent a small fraction of the actual workforce. Construction, agriculture, mining, and the informal sector, where the most dangerous work is concentrated, are largely invisible in the official statistics. Independent estimates suggest that India's workplace death toll is among the highest in the world: some estimates put annual workplace fatalities in the range of forty-five thousand to fifty thousand, compared to fewer than five thousand in the United States for a comparable workforce size.

The construction sector is particularly deadly. India's construction boom, driven by massive infrastructure investment and urban development, employs an estimated fifty to sixty million workers, most of them informal migrant labourers from the poorest states. Safety standards on construction sites are routinely ignored, and fatal accidents are frequent. The workers involved are overwhelmingly from Dalit and Adivasi communities, and their deaths are routinely underreported, inadequately investigated, and settled through small payments to families who have neither the knowledge nor the resources to demand legal accountability.

The heat mortality crisis that has intensified in India since 2022, driven by climate change, is an emerging dimension of occupational safety that the Labour Codes have not adequately addressed. India experienced multiple devastating heat waves between 2022 and 2025, with temperatures in states like Rajasthan, Uttar Pradesh, and Telangana reaching record levels. The workers most exposed to lethal heat are agricultural labourers, construction workers, and others

who work outdoors, who are precisely the workers most likely to be excluded from formal occupational safety protections. There is no specific regulatory framework for heat work limits in India comparable to the occupational heat guidelines that the ILO and the WHO have developed for tropical climate countries. The absence of such regulation, while workers are dying from heat exposure at work, constitutes a failure to fulfil India's obligations under ICESCR Article 7(b) to ensure safe and healthy working conditions.

CHAPTER FIVE: THE INFORMAL ECONOMY AND THE STRUCTURAL INVISIBILITY OF THE POOR

5.1 The Scale of Informality and Its Human Rights Implications

India's informal economy is not a temporary transitional phenomenon but a permanent structural feature of the economic landscape. Approximately ninety percent of India's workforce, approximately four hundred and fifty to five hundred million workers, are engaged in informal employment. They include agricultural labourers who work for daily wages on others' land, construction workers who are hired through contractors and sub-contractors for the duration of specific projects, domestic workers employed in middle and upper-class households, street vendors who sell goods from carts or on footpaths, home-based workers who process raw materials or assemble goods in their homes for piece-rate payments, waste pickers who collect and sort recyclable materials from garbage dumps and streets, and the rapidly expanding category of platform and gig workers.

What distinguishes informal employment from formal employment is not simply the absence of a written contract. It is the absence of the legal framework of protections that transforms a labour market transaction from a relationship of pure power into one mediated by rights. Formal employees have enforceable rights to minimum wages, to safe working conditions, to social security contributions, to protection against arbitrary dismissal, to union representation, and to grievance mechanisms. Informal workers have none of these protections in practice, even when they are nominally covered by certain labour laws. Their relationship with their employer, or with the platform that coordinates their labour, is one of pure power asymmetry, mediated only by competition in the labour market and, occasionally, by collective action.

The human rights implications of this informality are comprehensive. The economic insecurity of informal employment translates directly into violations of multiple ICESCR rights. Workers who earn below minimum wage lack the income to achieve an adequate standard of living, violating ICESCR Article 11. Workers who lack social security coverage are exposed to catastrophic economic shocks when they become ill, injured, or too old to work, violating ICESCR Article 9. Workers in dangerous informal workplaces without safety equipment or oversight risk injury or death in violation of ICESCR Article 7(b). Workers who cannot form or join unions in practice, or who are dismissed for union activity, are denied the ICESCR Article 8 right to freedom of association for labour purposes.

The legal status of different categories of informal workers under domestic law is complex and contested. Agricultural labourers are covered by the Minimum Wages Act if they work in scheduled employments, but the state machinery for enforcing this coverage is minimally present in most rural areas. Domestic workers were partially recognised by the Unorganised Workers' Social Security Act of 2008, but this Act created welfare boards for unorganised workers that have been only partially implemented across states. Home-based workers are covered by some specific state legislation in states like Maharashtra but have no comprehensive national legal framework. Waste pickers have no legal framework recognising their occupation or protecting their rights, and are frequently criminalised under municipal solid waste management rules that treat informal recycling as illegal dumping.

5.2 The Migrant Labour Crisis and the Pandemic Revelation

India's internal migration is among the largest in the world. Estimates of the number of internal migrants in India range from one hundred to three hundred million, reflecting genuine uncertainty about a population that is large, mobile, and deeply undercounted in official statistics. Migrant workers from the poorest states, particularly Uttar Pradesh, Bihar, Odisha, Jharkhand, Madhya Pradesh, and Rajasthan, travel to urban centres and industrial areas across India in search of work that their home states cannot provide. They work in construction, in factories, in homes as domestic workers, in brick kilns, in fields, and increasingly as delivery workers and cab drivers in the gig economy.

The COVID-19 pandemic exposed the complete absence of legal and social protection for India's migrant workforce with a brutality that was impossible to ignore. When the sudden national lockdown of March 24, 2020 was announced, millions of workers who had lost their jobs in a matter of hours found themselves stranded in cities where they could not afford rent, could not access food, had no savings to fall back on, and had no social support networks. The spectacle of millions of people attempting to walk hundreds of kilometres back to their home states, many dying on the roads, became the defining image of India's social contract failure.

The legal framework for migrant worker protection that existed before the pandemic was, on paper, not entirely absent. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979 required employers to register migrant workers with their states of origin, to pay them a displacement allowance and journey allowance, and to provide them with certain basic amenities. But the Act was almost universally ignored by employers and almost never enforced by labour inspectors. As a result, the millions of migrant workers who were stranded during the lockdown had no legal recourse, no access to welfare schemes designed for local residents, and no visibility in the administrative systems through which emergency support was being distributed.

The Supreme Court took up the migrant worker issue in suo motu proceedings during the pandemic, acknowledging the gravity of the situation and directing state governments to provide food, shelter, and transportation to stranded workers. The Court's interventions, while important, could not substitute for a policy framework that had comprehensively failed this population. The pandemic experience generated significant political rhetoric about the need to better protect migrant workers, but the translation of this rhetoric into effective policy has been limited. The

Labour Codes have merged the Inter-State Migrant Workmen Act into the Occupational Safety Code but have not fundamentally changed the enforcement architecture that allowed the previous law to be universally ignored.

5.3 The Agricultural Labour Crisis

Agricultural labourers represent the largest single category of informal workers in India, and their situation is among the most desperate. India has approximately one hundred and forty million agricultural labourer households, representing the landless rural poor who depend on wage labour on others' land for their subsistence. These are overwhelmingly Dalit households: the intersection of caste and class that has structured Indian rural society for centuries places the landless labour function primarily with the lowest-caste communities.

The conditions of agricultural labour in India are characterised by extreme wage insecurity, absence of social protection, high exposure to health risks including pesticide poisoning and heat stress, lack of access to drinking water and sanitation in the fields where they work, and chronic undernutrition. The minimum wage for agricultural labour varies by state and is set at levels that are deeply inadequate relative to any living wage standard. Enforcement of even these inadequate minimum wages is minimal in most states. Bonded labour, the extreme form of labour exploitation in which workers are compelled to work to pay off debts and cannot leave their employer until the debt is discharged, continues in agricultural areas across India, particularly among Dalit communities, despite its prohibition under both the Constitution and the Bonded Labour System (Abolition) Act of 1976.

The agricultural crisis in India, characterised by decades of farmer suicides driven by debt, crop failure, and market failure, is itself a human rights crisis of enormous dimensions. The National Crime Records Bureau has recorded hundreds of thousands of farmer and agricultural worker suicides since the mid-1990s. The causes are well-documented: the dismantling of state-supported agricultural procurement and credit systems since liberalisation, the replacement of subsistence crops with cash crops that expose farmers to market price volatility, the rise of private moneylending at usurious rates following the decline of cooperative credit, the inadequacy of crop insurance systems, and the devastation of climate change-driven crop failures. Each suicide represents a failure of the state to fulfil its obligations under ICESCR Articles 11 (adequate standard of living) and 6 (right to work) to create the conditions within which agricultural workers and small farmers can sustain their livelihoods.

CHAPTER SIX: BONDED LABOUR, CHILD LABOUR, AND MODERN SLAVERY

6.1 The Persistence of Bonded Labour

Bonded labour, the system in which a worker is compelled to work to pay off a debt, is one of the most severe violations of human dignity in the Indian labour system. It combines the violation of personal liberty with the violation of fair wages and safe working conditions, creating a form of coerced labour that the Supreme Court in Bandhua Mukti Morcha accurately

described as modern slavery. The Bonded Labour System (Abolition) Act of 1976 declared all bonded labour obligations void ab initio, prohibited the enforcement of any bonded labour obligation, and mandated the rehabilitation of liberated bonded labourers by state governments.

The persistence of bonded labour despite this legal prohibition is a product of the structural conditions that generate it: extreme poverty that creates the desperation driving workers to accept advance payments that become unrepayable debt traps; caste hierarchy that normalises the subjugation of Dalit and Adivasi labour to upper-caste employers; geographic isolation in rural areas that reduces workers' access to alternative employment and to legal assistance; and the complete failure of the rehabilitation scheme that is supposed to break the cycle by providing liberated bonded labourers with land, credit, and skills.

The scale of the problem is contested but clearly enormous. India committed in 2016 to liberating 18.4 million people from bonded labour by 2030, in alignment with UN Sustainable Development Goal Target 8.7. But as documented in an August 2025 analysis in the Business and Human Rights Journal, a Right to Information request revealed that over the three years preceding 2025, the annual average of bonded labourers liberated and rehabilitated was only nine hundred, and from 2024 to 2025 only two hundred and forty-six bonded workers were liberated. At this rate, the 2030 commitment is not merely unachievable but mockingly so. The gap between the committed target of 1.3 million per year and the actual achievement of a few hundred represents one of the most glaring examples of India's willingness to make international commitments without any serious intention of fulfilling them.

The industries in which bonded labour is most prevalent include brick kilns, agriculture, stone quarries, carpet weaving, beedi (cigarette) rolling, domestic work, and the construction sector. The Business and Human Rights Journal analysis noted that a study found that eighty to ninety-eight percent of bonded labourers were Dalits or from indigenous communities. This demographic concentration reflects the caste structure of bonded labour: the economic relationship of debt bondage almost always runs from an upper-caste employer to a lower-caste worker, reproducing and reinforcing the power hierarchies of the caste system through economic rather than ritual means.

Corporate accountability for bonded labour is an emerging issue in international business and human rights law. The UN Guiding Principles on Business and Human Rights, adopted by the UN Human Rights Council in 2011, establish that businesses have a responsibility to respect human rights throughout their supply chains. Bonded labour in Indian supply chains, including in the supply chains of major international corporations that source textiles, garments, leather goods, and agricultural commodities from India, creates corporate liability questions that extend beyond the Indian domestic legal framework into the evolving international framework of mandatory human rights due diligence. The European Union's Corporate Sustainability Due Diligence Directive, adopted in 2024, and the French Duty of Vigilance Law, which has been judicially enforced in a landmark 2026 ruling, create binding obligations for European corporations to identify and address bonded labour risks in their supply chains. The March 2026 French ruling, documented in the Business and Human Rights Journal, represents a significant advancement in corporate accountability for supply chain abuses.

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6.2 Child Labour: Legal Framework and Persistent Reality

Child labour in India is both a human rights violation of enormous scale and a symptom of the broader failure to realise economic, social, and cultural rights. When families cannot earn adequate income through adult labour, when social security systems provide no safety net for economic shocks, and when the state fails to provide free and compulsory education of adequate quality, children are drawn into work as an economic necessity. Understanding child labour as primarily a cultural problem, or as a problem of individual family choices, obscures the structural drivers and leads to policy responses that address symptoms rather than causes.

The legal framework is formally comprehensive. Article 24 of the Constitution prohibits the employment of children below fourteen years in factories, mines, or hazardous employment. The Child Labour (Prohibition and Regulation) Act of 1986, as amended in 2016, prohibits children below fourteen from any employment except in family enterprises and the entertainment industry, and restricts children between fourteen and eighteen from hazardous occupations. The Right to Education Act of 2009 mandates free and compulsory education for all children between six and fourteen, creating a legal duty on the state to remove children from work and put them in school.

The formal prohibition has not eliminated child labour. The 2011 Census found ten million child workers. Subsequent surveys suggest the number has declined, driven partly by the expansion of schooling and partly by demographic change, but the most recent comprehensive data confirms that millions of children, disproportionately from Dalit, Adivasi, and Muslim communities, continue to work in agriculture, domestic service, brick kilns, carpet weaving, and other sectors. The exceptions carved out for family enterprises and the entertainment industry are potential loopholes through which significant child labour continues under legal cover.

The intersections between child labour, caste, gender, and geographic marginality are stark. Dalit children in rural Uttar Pradesh, Bihar, and Rajasthan are the most likely to be engaged in bonded child labour, sometimes inherited from parents who are themselves bonded labourers. Girl children from poor families are disproportionately engaged in domestic work, which is invisible in official statistics and which removes them from school at precisely the age when education matters most for their future prospects. Children from minority Muslim communities in industries like carpet weaving, brassware, and leather goods in Uttar Pradesh are concentrated in piecework arrangements that involve long working hours and exposure to toxic materials.

The relationship between child labour and the right to education is one of mutual reinforcement: children who work cannot attend school, and families that do not see adequate returns to education have less incentive to keep their children in school rather than in work. The RTE Act's guarantee of free and compulsory education has significantly increased enrollment rates, but completion rates and learning outcomes remain deeply inadequate. The ASER (Annual Status of Education Report) surveys conducted annually by the civil society organisation Pratham have consistently documented that a significant proportion of children in government schools cannot read at grade level or perform basic arithmetic. This learning crisis means that the formal right to education is not being realised in substance, and that the choice between school and work does

not look as obvious to families experiencing economic pressure as it would if school actually delivered the skills and credentials that would open economic opportunities.

CHAPTER SEVEN: THE GIG ECONOMY - DIGITAL EXPLOITATION AND THE NEW PRECARIAT

7.1 The Platform Economy and the Reclassification of Work

The gig economy is not a new economic phenomenon, but its organisation through digital platforms represents a qualitatively new form of labour market organisation that has profound implications for labour rights and the international legal framework that protects them. Platform companies like Uber, Ola, Swiggy, Zomato, Amazon Flex, and Rapido connect workers who provide transport, delivery, logistics, and other services with customers who demand those services, using algorithmic systems to coordinate supply and demand in real time. The business model's genius, from the perspective of the platforms, is that it classifies workers as independent contractors rather than employees, thereby avoiding the obligations that employment status would entail, including minimum wages, social security contributions, safe working conditions, protection against arbitrary dismissal, and the right to collective bargaining.

The legal fiction at the heart of this classification is particularly thin in the Indian context. A Swiggy delivery worker, for example, is assigned deliveries by an algorithmic system, must meet performance metrics set by the platform, receives a per-delivery fee set unilaterally by the platform, and can be deactivated from the platform without notice if their rating falls below a certain level. They provide their own motorcycle and mobile phone, and they bear the full cost of fuel, maintenance, and insurance. In what sense is this worker an independent contractor rather than an employee? The worker has no freedom to determine the price of their services, no ability to independently market those services, no capital investment in the enterprise, and no genuine entrepreneurial risk in the sense that profit-seeking capitalists bear risk. They are workers in every economically meaningful sense, and the independent contractor label is a legal device to deny them the rights of workers.

The East Asia Forum's April 2026 analysis of India's gig economy noted that the government's Economic Survey 2025-2026 projected that non-agricultural gig work could reach 6.7 percent of the nation's workforce by 2029-2030. This represents a workforce of potentially fifty to sixty million people. The regulatory architecture that governs their working lives, following the Labour Codes of November 2025, provides minimal protection: only the Code on Social Security recognises them at all, the remaining three Codes covering wages, safety, and industrial relations exclude them entirely, and even the Social Security Code's protections are conditioned on eligibility thresholds that exclude the most vulnerable.

The gig workers' strike of January 1, 2026, described by The Hindu as the first nationwide collective assertion by gig workers demanding dignity, regulation, and accountability in India's platform economy, represented a significant moment of class consciousness in this new workforce. Workers demanded minimum earnings guarantees, transparency in algorithmic

management, protection against arbitrary deactivation, and access to meaningful social security. The platforms' response was to contest the workers' right to collective action, citing their independent contractor status. The legal framework supported the platforms: workers who are not employees cannot form recognised trade unions under the Industrial Relations Code, cannot engage in legally protected strike action, and cannot access industrial dispute resolution mechanisms.

7.2 Algorithmic Management and the New Forms of Control

The algorithmic management systems that platforms use to coordinate, monitor, and discipline their workforces represent a new form of labour control that existing labour law frameworks, including India's new Labour Codes, are entirely unprepared to address. These systems assign work through algorithms that workers cannot see or understand, monitor performance through GPS tracking and customer ratings, set prices through dynamic pricing mechanisms that workers cannot negotiate, and impose discipline through deactivation without explanation or appeal.

The human rights implications of algorithmic management have been explored in a growing academic literature. Antonio Casilli's work on digital labour, Shoshana Zuboff's work on surveillance capitalism, and Kate Crawford's Atlas of AI, published in 2021, have documented how algorithmic systems create new forms of power asymmetry in which workers are subjected to intensive surveillance and control while being denied the formal status that would entitle them to the protections of labour law. Crawford's analysis is particularly relevant to India because she traces the human and environmental costs of the AI systems that power platform economies back through the supply chains to the miners who extract the minerals from which computing hardware is made, many of whom are in exactly the kind of informal, exploitative, and unprotected work arrangements that this chapter is describing.

The question of algorithmic transparency is one of the most important emerging issues in digital labour rights. Workers subject to algorithmic management cannot know why specific assignments are given or withheld, why their ratings change, or why they have been deactivated. They cannot challenge the system because they cannot see its workings. The EU Platform Work Directive addresses this by mandating algorithmic transparency, requiring platforms to disclose the parameters of their algorithmic management systems to workers and their representatives. India has no equivalent requirement. The Draft Central Rules under the Code on Social Security, published in December 2025, are silent on algorithmic management entirely.

The thermal and physical working conditions experienced by gig delivery workers in India are a specific occupational health crisis that has received insufficient attention. Delivery workers on motorcycles in Indian cities are exposed to extreme heat in summer months when temperatures regularly exceed forty degrees Celsius, to air pollution at levels that dramatically exceed WHO safe limits, to road traffic dangers that make their work one of the most dangerous in India, and to the psychological stress of algorithmic performance monitoring. The 2025 festive season delivery surge, which the Indian Express documented as involving delivery targets that required workers to complete up to twenty-five deliveries per hour, created conditions of extreme physical exertion and heat stress that constitute occupational health violations.

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7.3 The Missing Regulatory Framework and International Comparisons

India's regulatory response to the gig economy, while representing some acknowledgment of the problem through the Code on Social Security, falls dramatically short of what is required by the ICESCR and the ILO's labour standards, and equally short of what comparable economies are doing. The comparison with the EU Platform Work Directive is particularly instructive.

The EU Directive, adopted in 2024 after years of negotiation, establishes a presumption of employment for platform workers unless the platform can demonstrate otherwise. This reversal of the burden of proof is critical because it removes the incentive for platforms to construct elaborate legal architectures to classify workers as independent contractors. Under the presumption, the platform must affirmatively prove that its workers are genuinely self-employed, and if it cannot, it bears the full obligations of an employer including minimum wages, social security contributions, working time protections, and the right to collective bargaining.

Singapore's approach, through the Platform Workers Act, takes a different path but is equally more protective than India's. It phases in mandatory social security contributions over five years for platform workers without requiring full employment reclassification. This pragmatic approach acknowledges the practical difficulties of full reclassification while ensuring that platform workers progressively gain social security protection comparable to employees.

India's approach accepts the platforms' self-serving classification framework entirely, building a separate and lesser category of worker that receives a much thinner package of benefits. The East Asia Forum analysis noted the fundamental contradiction: India seeks to formalise a workforce while allowing companies to shelter behind the aggregator label. This contradiction cannot be resolved without confronting the classification question. Until the law requires platforms to either classify their workers as employees or demonstrate genuinely that they are independent contractors, the gig economy will continue to expand the precarious workforce while the formal labour protection framework applies to a shrinking proportion of the actual working population.

CHAPTER EIGHT: PRIVATISATION AND THE EROSION OF ECONOMIC RIGHTS

8.1 The Privatisation Agenda and Public Services

The privatisation of public sector enterprises and services is a structural feature of the economic policy landscape that has accelerated under the Modi government. The government's National Monetisation Pipeline, announced in 2021, proposed the monetisation of government assets worth six trillion rupees over four years through various models including leasing, privatisation, and public-private partnerships. The assets targeted for monetisation include roads, railways, airports, ports, power transmission lines, gas pipelines, urban real estate, warehouses, and telecommunications infrastructure. The stated rationale is to raise resources for capital expenditure by unlocking the value of underutilised government assets.

The human rights dimensions of privatisation are complex and context-dependent, but several consistent patterns emerge from the Indian experience. First, the privatisation of previously public services tends to raise prices, as private operators price to cover costs and generate profit rather than pricing to ensure universal access. When the services being privatised are essential services, including water, electricity, transportation, healthcare, and education, price increases translate directly into exclusion of the poor, who can no longer afford access. This is a violation of ICESCR rights to water (now recognised through General Comment 15), health, and adequate standard of living.

Second, privatisation typically results in the reduction of the workforce in privatised enterprises, as the new private operators seek to improve efficiency by reducing the labour share of costs. When combined with the Labour Code's weakening of retrenchment protections, privatisation creates conditions in which large numbers of workers can be dismissed relatively easily. The workers most likely to lose employment through privatisation are older, lower-skilled workers who are least able to find alternative employment and who have organised in unions that will not exist in the privatised enterprise.

Third, the privatisation of public enterprises typically reduces the proportion of formal employment covered by reservations for scheduled castes and scheduled tribes. Reservation requirements apply to public sector employment; they do not apply to private sector employment, except in some states and in limited circumstances. The privatisation of public enterprises therefore directly reduces the economic integration mechanism through which Dalit and Adivasi workers have been most successfully entering the formal economy. The BJP government's privatisation agenda is, from this perspective, an assault not merely on public sector employment in general but specifically on the economic gains of communities that have depended on reservation to access formal employment.

8.2 Healthcare Privatisation and the Right to Health

India's healthcare system is a study in institutional inadequacy that produces systematic violations of the right to the highest attainable standard of physical and mental health guaranteed by ICESCR Article 12. India's public expenditure on health, at approximately two percent of GDP as of 2024, is among the lowest of any major economy. The World Health Organisation recommends that countries spend at least five percent of GDP on health to ensure universal health coverage. India's underspending on public health has multiple direct consequences for the realisation of the right to health.

The public health infrastructure, which should be the primary provider of healthcare for the poor, is chronically understaffed, undersupplied, and underfunded. Primary health centres in rural areas routinely lack doctors, nurses, essential medicines, diagnostic equipment, and basic infrastructure including reliable electricity and clean water. The ratio of doctors to population in India is approximately one doctor for every thousand population, below the WHO standard of one per five hundred and dramatically below what is needed to provide comprehensive primary care. The rural-urban distribution of healthcare workers is massively skewed toward urban areas, leaving rural populations, who represent two-thirds of the total, with access to a much smaller share of healthcare resources.

The government has promoted the Ayushman Bharat Pradhan Mantri Jan Arogya Yojana, a health insurance scheme for the poorest families, as a solution to the healthcare access crisis. The scheme provides insurance coverage for hospitalisation of up to five hundred thousand rupees per family per year for secondary and tertiary care in empanelled public and private hospitals. The scheme has enrolled hundreds of millions of families and has paid for tens of millions of hospitalisation claims, representing a genuine expansion of access to hospitalisation for previously excluded populations.

But the Ayushman Bharat scheme has also been criticised for several serious weaknesses. It covers only hospitalisation, leaving the much larger burden of outpatient care, preventive care, diagnostic services, and medicines entirely uncovered. It relies heavily on private hospitals for service delivery, channelling public funds into the private health sector without adequately regulating quality or preventing fraud. Multiple independent evaluations and investigative reports have documented widespread fraud in the scheme, with hospitals submitting claims for services not rendered, inflating costs, and providing inappropriate or unnecessary care to maximise billing. The scheme does nothing to strengthen the public health infrastructure that would be necessary to provide genuinely universal healthcare, and may actually weaken it by training patients and policymakers to see private insurance as the primary healthcare delivery mechanism rather than a supplement to strong public services.

The COVID-19 pandemic exposed the consequences of India's healthcare underfunding with devastating clarity. The second wave of April and May 2021, during which oxygen shortages caused thousands of preventable deaths in hospitals across India, was not a natural disaster. It was the predictable consequence of decades of underinvestment in public health infrastructure. The images of families of COVID patients desperately searching for hospital beds and oxygen cylinders on social media while hospitals turned them away represented one of the most visceral failures of the Indian state's obligation to protect the right to life and the right to health.

8.3 Education Privatisation and the Right to Education

The right to free and compulsory elementary education was made a fundamental right through Article 21A, inserted by the 86th Constitutional Amendment of 2002, and given legislative content by the Right to Education Act of 2009. The RTE Act mandates free and compulsory education for all children between six and fourteen, prohibits private schools from charging capitation fees and conducting screening tests for admission, and requires private schools to reserve twenty-five percent of seats in each class for children from economically weaker sections and disadvantaged groups, to be reimbursed by the government.

The Act has achieved significant progress in terms of school enrollment. The out-of-school child population, which was approximately thirty-five million when the Act was passed, has been substantially reduced. The construction of school infrastructure, the provision of mid-day meals, and the abolition of fees have all contributed to increased enrollment, particularly among girls and children from marginalized communities. These are real achievements.

But the learning crisis that the ASER reports have documented for over a decade means that the formal right to education is not being realised in substance. The 2024 ASER report found that

approximately forty percent of children in standard five could not read a standard two text. Mathematical competencies showed similar deficits. The teacher quality and attendance crisis in government schools, which ASER and other studies have documented through data showing that a substantial proportion of teachers are absent on any given day and that many who are present engage in limited actual teaching, means that school enrollment has not translated into educational achievement.

The quality gap between government schools and private schools, which has driven a massive exodus of middle-class families from the public school system even at the cost of significant household expenditure, means that India is developing a deeply stratified educational system in which the quality of education a child receives depends almost entirely on their family's economic position. Private schools, which now account for approximately forty-five percent of total enrollment, are largely inaccessible to the poor despite the RTE Act's twenty-five percent reservation requirement, because the requirement applies only to elementary schools, leaves upper schools without the same obligation, and is poorly enforced in most states.

The privatisation of higher education, while outside the scope of the RTE Act, represents an additional dimension of educational inequality. The IITs and IIMs, India's elite public technical and management institutions, charge fees that have increased dramatically in recent years, significantly reducing their accessibility to students from poor and lower-middle-class backgrounds. Private engineering and medical colleges charge fees that are beyond the reach of most families. The reservation system provides access for scheduled caste and scheduled tribe students to public institutions, but the quality of those institutions varies enormously and the overall higher education system increasingly channels the best opportunities to those who can afford private education.

CHAPTER NINE: LAND RIGHTS, DISPLACEMENT, AND DEVELOPMENT AS DISPOSSESSION

9.1 The Right to Land and the Constitutional Framework

Land is the foundational economic asset for the rural poor. In a society where approximately sixty percent of the population depends on agriculture and related activities, and where urbanisation has not generated adequate alternative employment for those displaced from agriculture, land is not merely a financial asset but the material basis of livelihood, community, and identity. The right to land is therefore not a minor economic interest but a fundamental aspect of the right to an adequate standard of living guaranteed by ICESCR Article 11 and of the right to livelihood, which the Supreme Court has read into Article 21.

The Indian Constitution does not guarantee a fundamental right to property since the deletion of Article 19(1)(f) by the 44th Amendment in 1978 and the conversion of Article 31's right to property into a constitutional right under Article 300A, which provides that no person shall be deprived of his property save by authority of law. This minimalist formulation, which was designed to facilitate land reform by preventing landowners from using property rights to

challenge redistribution, has the consequence that property rights, including the rights of the poor to land they actually occupy and depend on, receive relatively weak constitutional protection.

The consequences of this weak protection for the poor are severe. The state has extensive powers of compulsory acquisition under the Land Acquisition Act, most recently consolidated and partially reformed in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013. This Act, while significantly improving on its colonial-era predecessor in terms of compensation standards and resettlement requirements, still allows compulsory acquisition for public purposes and for private companies for public-private partnership projects. The definition of public purpose is broad enough to cover the acquisition of agricultural land and forest land for industrial projects, mining projects, and urban development.

The scale of displacement driven by development-related land acquisition in India since independence is one of the least acknowledged catastrophes of the post-independence period. Estimates of the number of people displaced by development projects since 1947, including by dam construction, mining, industrial development, and urban expansion, range from thirty to sixty million. The communities most affected are overwhelmingly Adivasi, Dalit, and rural poor, communities that lack the political power to resist acquisition and the legal resources to contest inadequate compensation.

9.2 The Adivasi Land Crisis and Corporate Extraction

The situation of Adivasi communities in relation to land is the most severe dimension of the land rights crisis. Adivasi communities, which number approximately one hundred and four million people and represent approximately eight percent of India's population, are constitutionally recognised as Scheduled Tribes. Their ancestral homelands, concentrated in the forested areas of central and eastern India, contain a disproportionate share of India's mineral wealth, including coal, iron ore, bauxite, manganese, and uranium.

The systematic dispossession of Adivasi communities from their ancestral lands in order to extract these mineral resources is one of the most comprehensive violations of economic rights and cultural rights in India today. It involves the violation of the right to self-determination of indigenous peoples, the right to free, prior and informed consent before projects affecting their lands and resources, the right to an adequate standard of living, the right to culture, and the right to non-discrimination.

The legal framework that governs this dispossession is complex. The Fifth Schedule of the Constitution gives special protection to Scheduled Tribe areas in mainland states, including the requirement that laws enacted by state legislatures must receive the assent of the Governor, who is under constitutional duty to protect Adivasi interests. The Panchayats (Extension to Scheduled Areas) Act of 1996, known as PESA, extends the jurisdiction of gram sabhas (village assemblies) to Scheduled Areas and requires their consultation and consent for land acquisition and the leasing of minor minerals. The Forest Rights Act of 2006, discussed earlier, recognises forest rights of tribal communities. These provisions, taken together, should create a robust framework for Adivasi consent to development projects.

In practice, these protections have been systematically circumvented. The Fifth Schedule has been treated as a minor administrative inconvenience rather than a substantive protection. PESA has been implemented in only partial and inconsistent ways by state governments, which have shown little interest in genuinely empowering gram sabhas to resist projects favoured by state capitals and corporate interests. The Forest Rights Act has been implemented inadequately, leaving millions of community forest rights unrecognised. In the absence of effective implementation of these protective frameworks, Adivasi communities continue to be displaced from their lands to make way for mining projects, dams, thermal power plants, and wildlife sanctuaries, often without adequate consultation, consent, compensation, or rehabilitation.

The judicial framework has provided some check. The Supreme Court's decisions in Samata v. State of Andhra Pradesh (1997), which held that in Fifth Schedule areas, the state could not transfer tribal land to non-tribal entities including private corporations without violating constitutional protections, and Nandini Sundar v. State of Chhattisgarh (2011), which struck down the Salwa Judum, a state-sponsored armed militia composed of Adivasi people pitted against other Adivasis in the context of anti-Maoist operations, represent significant judicial interventions in defence of Adivasi rights. But their implementation has been inconsistent, and the political will to resist the extractive economy's demands on Adivasi lands has been minimal.

9.3 Urban Displacement and the Slum Demolition Crisis

In urban India, the land rights crisis takes a different form: the systematic destruction of informal settlements, which house the hundreds of millions of people who have migrated to cities without being able to access formal housing markets. India's urban informal settlements, colloquially called slums but more accurately described as self-built housing on land without secure tenure, house an estimated one hundred to one hundred and fifty million people in conditions of severe deprivation but also of significant community organization, economic activity, and social solidarity.

The demolition of these settlements, often in the name of urban development, beautification, or infrastructure projects, constitutes a massive ongoing violation of the right to housing under ICESCR Article 11 and the right to livelihood under Article 21. The Supreme Court, through its interpretation of Article 21, has recognised a right to shelter and has required that persons cannot be evicted without adequate notice and without the provision of alternative accommodation. But the enforcement of these judicial protections has been inconsistent, and state and municipal authorities have repeatedly demolished settlements in defiance of court orders or by obtaining orders from courts on the basis of misleading information.

The intersection of urban displacement with religious discrimination, which was examined in Part Six of this textbook in the context of bulldozer justice, gives the urban land crisis a specifically communal dimension in BJP-governed states. The South Asia Justice Campaign review cited in Part Six documented that between January and March 2025 alone, more than 7,400 homes were demolished across India, rendering over 41,000 people homeless, with approximately 37 percent of those demolitions targeting Muslims. This targeting, in a country where Muslims represent approximately 14 percent of the population, represents a pattern of discriminatory displacement that violates both the right to housing and the right to equality.

The Supreme Court's October 2024 judgment on bulldozer demolitions, while representing an important reassertion of the rule of law, has not stopped the demolitions in practice. State governments in BJP-governed states have found ways to proceed with demolitions while nominally complying with procedural requirements, and the pattern of disproportionate targeting of Muslim communities has continued.

CHAPTER TEN: THE RIGHT TO FOOD - FROM JUDICIAL MANDATE TO ADMINISTRATIVE FAILURE

10.1 The Jurisprudence of the Right to Food

The right to food is the most fundamental of all economic rights: without adequate food, no other right can be exercised, and the body itself is destroyed. ICESCR Article 11 guarantees the right of everyone to an adequate standard of living, including adequate food, and the UN Committee on Economic, Social and Cultural Rights' General Comment 12 provides a comprehensive interpretation of the right to adequate food. General Comment 12 emphasises that the right to food must be realised progressively but that states have an immediate obligation to ensure freedom from hunger, defined as the situation in which people lack access to the minimum essential food necessary to sustain life.

India's judicial recognition of the right to food emerged from the People's Union for Civil Liberties v. Union of India litigation, which began in 2001 when PUCL filed a petition before the Supreme Court noting that India held massive food grain stocks while people were dying of starvation in Rajasthan. The Court, in a series of interim orders that stretched over two decades of continuing litigation, recognised the right to food as a component of the right to life under Article 21, directed the government to implement a comprehensive public distribution system providing subsidised food grains to the poor, mandated the cooked mid-day meal programme in government schools, directed the expansion of the Integrated Child Development Services programme for children under six, and ordered the implementation of specific nutrition interventions in drought-affected areas.

The Court's recognition of the right to food in this litigation represents one of the most significant instances of judicial enforcement of economic rights in Indian legal history. The litigation drove the expansion of the public distribution system and the mid-day meal programme in ways that have genuinely improved nutrition outcomes for millions of people. The National Food Security Act of 2013, enacted partly in response to the ongoing PUCL litigation and the political pressure generated by the UPA government's commitment to the right to food, provided a statutory basis for subsidised food grain entitlements for approximately two-thirds of the population.

10.2 The National Food Security Act and Its Implementation Failures

The National Food Security Act of 2013 is, in principle, one of the most ambitious food security legislations in the world. It provides legal entitlements to subsidised food grains, five

kilogrammes per person per month of wheat, rice, or coarse cereals at highly subsidised prices, for approximately eight hundred million people, representing approximately sixty-seven percent of the population. It also contains provisions for women's maternity entitlements and child nutrition rights.

The implementation of the Act has been characterised by significant achievements and serious failures. The Public Distribution System, through which food grains are distributed, has been partially reformed through the introduction of Aadhaar-linked electronic Point of Sale machines that reduce diversions through biometric authentication. The total quantity of subsidised food grain reaching beneficiaries has increased. The mid-day meal programme, now renamed the PM Poshan scheme, provides cooked meals to approximately one hundred and twenty million children in government schools.

But serious implementation failures persist. The internet shutdown problem discussed in earlier parts of this textbook has a direct food security dimension that is often overlooked: as the HRW 2025 World Report noted, internet shutdowns disproportionately hurt socially and economically marginalized communities by denying them access to free or subsidized food rations and livelihoods. The Aadhaar-linked distribution system, while reducing diversion, has created a new category of exclusion error: beneficiaries who are registered in the system but whose biometric authentication fails, who have migrated and cannot access their entitlements in their new location, or who live in areas without reliable internet connectivity. The substitution of biometric authentication for the previous ration card system has simultaneously reduced some forms of corruption and created new forms of exclusion.

The nutrition outcomes of the food security system remain deeply alarming. The National Family Health Survey-5 (2019-2021) found that 35.5 percent of children under five were stunted (too short for their age due to chronic malnutrition), 19.3 percent were wasted (too thin for their height due to acute malnutrition), and 32.1 percent were underweight. These figures place India among the worst-performing countries in the world on child nutrition. The Global Hunger Index 2023 ranked India 111th out of 125 countries, in a category described as serious, and the 2024 report showed limited improvement.

The persistence of severe malnutrition in a country that is simultaneously a major food exporter and a middle-income economy is not explained by aggregate food availability. India produces sufficient calories to feed its population adequately. The malnutrition crisis is a distribution failure, a consequence of poverty, discrimination, inadequate public health and nutrition services, water and sanitation deficits that cause the chronic infections that make malnutrition worse, and the specific deprivation of women's nutrition and agency that drives high rates of low birth weight and early childhood malnutrition.

10.3 The Abolition of MGNREGA and the Rural Income Crisis

The Mahatma Gandhi National Rural Employment Guarantee Act, enacted in 2005 and one of the most significant social protection measures in Indian history, guarantees one hundred days of wage employment per year to any rural household whose adult members are willing to do unskilled manual work. The scheme has been one of the most extensively evaluated social

protection programs in the world, and the evidence on its impact is largely positive: it has reduced rural poverty, improved consumption among poor households, empowered women (who constitute a significant proportion of MGNREGA workers), improved agricultural wages in areas of implementation, and reduced distress migration.

The BJP government has had a consistently hostile attitude toward MGNREGA, viewing it as an inefficient public work program that encourages laziness and depresses work incentive. Prime Minister Modi described MGNREGA in 2015 as a living monument to Congress's failure to develop India. While the scheme was not eliminated under previous terms, its funding has been consistently inadequate, leading to delayed wage payments, exhaustion of state allocations before the end of the financial year, and denial of work to households demanding it.

The World Socialist Web Site's February 2026 analysis documented what it described as the BJP government's decision to abolish India's national rural employment guarantee shortly after announcing the Labour Codes, noting that the express aim was depressing the wages of agricultural labourers. The abolition of MGNREGA removes the floor that had prevented agricultural wage rates from falling below the guarantee wage in areas with active implementation. For the approximately thirty to fifty million rural poor households who have relied on MGNREGA employment as a critical income supplement, this represents a significant worsening of their economic security and a direct violation of the progressive realisation obligation under the ICESCR, which prohibits retrogressive measures.

CHAPTER ELEVEN: THE RIGHT TO HEALTH - A CONSTITUTIONAL PROMISE DISHONOURED

11.1 The Legal Foundations and Their Inadequacy

The right to health in India has been developed primarily through judicial interpretation of Article 21 of the Constitution. The Supreme Court's decisions in Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996), in which the Court held that the right to life includes the right to emergency medical care, and in Vincent Panikurlangara v. Union of India (1987), in which the Court held that the state has an obligation to ensure the availability of life-saving drugs, represent significant constitutional recognitions of health rights. Subsequent decisions have expanded the right to health to include the rights to basic healthcare services, reproductive health, and, more recently, mental health.

But the gap between the constitutional recognition and the actual healthcare situation of the majority of India's population is vast. India spends approximately two percent of its GDP on public health, compared to WHO recommendations of five percent and the achievement of comparable economies. This underspending produces a healthcare system that is unable to meet the needs of the majority population. Public health facilities are chronically understaffed, underfunded, and undersupplied. The doctor-to-population ratio is approximately half the WHO recommended minimum. Medical equipment in district hospitals is frequently broken or

unavailable. Essential medicines are frequently out of stock in public health facilities, forcing patients to purchase them in the private market at full cost.

The private health sector, which has expanded dramatically since liberalisation, now accounts for approximately seventy percent of total healthcare provision. This privatisation of healthcare delivery, in the absence of a strong public sector alternative and in the absence of effective regulatory oversight of private providers, has produced a system characterised by massive out-of-pocket expenditure, catastrophic health spending that drives families into poverty, widespread over-treatment and unnecessary procedures driven by profit motives, and significant geographic inequality in access.

The NSSO's health expenditure surveys consistently show that health expenditure is one of the most important drivers of household impoverishment in India. Approximately fifty-five million Indians are pushed below the poverty line annually due to out-of-pocket health expenditure. The Lancet published an analysis in 2024 noting that India's healthcare system performs significantly below its income level, with health outcomes that are worse than those of comparable lower-middle-income countries in Southeast Asia.

11.2 Mental Health: The Most Neglected Dimension

Mental health represents perhaps the most complete failure of India's health system in relation to the right to health. India's mental health treatment gap, defined as the proportion of people with mental health conditions who do not receive adequate treatment, is estimated at between seventy and eighty percent. There are approximately five thousand psychiatrists in a country of 1.45 billion people, most of them concentrated in major urban centres. The Mental Healthcare Act of 2017, which represented a significant progressive reform of India's mental health legal framework, established a right to mental healthcare and imposed positive obligations on the state to provide mental health services.

The implementation of the Mental Healthcare Act has been deeply inadequate. The State Mental Health Authorities required by the Act have been established in only some states. The District Mental Health Programme, which is the primary mechanism for delivering community-based mental health services, is funded at levels that make comprehensive coverage impossible. The Act's progressive provisions on the rights of persons with mental illness, including the right to make advance directives about treatment, the right to legal aid, and the right to be treated in community settings rather than in institutions, have been implemented inconsistently.

The mental health crisis in India is compounded by the dimensions of discrimination and violence explored in earlier parts of this textbook. Kashmiri civilians, who have lived under decades of conflict, face extremely high rates of post-traumatic stress disorder, anxiety, and depression that the healthcare system is entirely incapable of addressing. Dalit communities, subjected to chronic caste-based violence and discrimination, face specific mental health burdens that are almost entirely unaddressed by the public health system. Survivors of sexual violence, including the millions of women who have experienced domestic violence, face mental health consequences that the healthcare system is grossly ill-equipped to treat. The human rights analysis of the right to health in India must therefore account not only for the inadequacy of the

health system itself but for the specific health consequences of the other human rights violations documented throughout this textbook.

CHAPTER TWELVE: THE RIGHT TO EDUCATION - ACCESS WITHOUT QUALITY

12.1 The Constitutional Right and Its Structural Limitations

Article 21A, inserted by the 86th Constitutional Amendment of 2002, established the right to free and compulsory education for all children between six and fourteen years as a fundamental right. The Right of Children to Free and Compulsory Education Act of 2009 provided the legislative framework for implementing this right. These constitutional and legislative developments represent the most significant expansion of educational rights in India's post-independence history.

But the right to education, as currently understood and implemented in India, is primarily a right of access rather than a right of quality education. The RTE Act guarantees enrollment, retention, and completion of elementary school, and mandates certain quality standards in terms of infrastructure (toilets, classrooms, drinking water), teacher qualifications, pupil-teacher ratios, and the prohibition of corporal punishment. But it does not guarantee that the education provided in government schools will actually develop the competencies, knowledge, and skills that children need to participate effectively in economic and social life.

The learning crisis documented by ASER reports is the central evidence of this quality failure. When significant proportions of children in standard five cannot read a standard two text, the formal right to education is being honoured only in its most minimalist and procedural sense: children are in school, but the school is not providing education in any meaningful sense. This represents a violation not merely of the spirit but, properly understood, of the substance of the right to education guaranteed by ICESCR Article 13, which specifies that education shall be directed to the full development of the human personality and shall promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.

12.2 Higher Education, Exclusion, and the Undermining of Reservation

The higher education system in India is characterised by extreme inequality in quality and access. At the apex are the Indian Institutes of Technology, the Indian Institutes of Management, the All India Institute of Medical Sciences, and a handful of other institutions of genuine national and international excellence. Below this elite tier is a vast and heterogeneous system of state universities, private deemed universities, affiliated colleges, and standalone professional institutions of enormously variable quality.

The access of Dalit and Adivasi students to higher education, and specifically to quality higher education, has been a central political and legal battleground since independence. The reservation of seats in public educational institutions for scheduled castes and scheduled tribes, mandated by Article 15(4) and Article 46 of the Constitution, has been one of the primary

mechanisms through which Dalit and Adivasi students have accessed higher education. But reservation has faced persistent resistance, legal challenges, and social hostility in elite educational institutions.

The suicide of Rohith Vemula at Hyderabad Central University in January 2016, an event discussed briefly in earlier parts of this textbook, requires deeper examination in the context of educational rights. Vemula was a Dalit Ph.D. student in science who had been placed under suspension from the university hostel, along with four other Dalit students, following a complaint by a student organisation affiliated with the ABVP, the RSS-linked student union. The suspension, which came after months of institutional harassment related to Vemula's participation in progressive student politics, cut him off from his scholarship payments and effectively rendered him destitute within the university. His suicide note, which became widely read after his death, articulated with devastating precision the experience of a Dalit student in an institution that was constitutionally committed to his inclusion but culturally oriented toward his exclusion.

The Rohith Vemula case became a flashpoint for the intersecting issues of caste discrimination in higher education, the Brahminical institutional culture of elite universities, the weaponisation of ABVP complaints as a mechanism of harassment against Dalit students, and the failure of university administrations to protect the rights of students from marginalised communities. The subsequent UGC circular on casteism in universities, and the ongoing advocacy by Dalit student organisations for institutional transformation, represent continuing struggles for the substantive realisation of the educational rights that are nominally guaranteed.

12.3 The Erosion of Minority Educational Rights

The minority educational rights guaranteed by Articles 29 and 30 of the Indian Constitution, which protect the rights of linguistic and religious minorities to conserve their culture and to establish and administer educational institutions, have been under sustained pressure from the Hindu nationalist project. The interpretation of minority educational rights by the Supreme Court, through decisions like TMA Pai Foundation v. State of Karnataka (2002) and the subsequent evolution of doctrine, has resulted in a significantly constrained understanding of minority rights in education.

The Madhyamik Shiksha Parishad circular in Uttar Pradesh that directed that Urdu medium schools would not receive government grants unless they shifted to Hindi medium instruction is a recent example of the administrative erosion of Muslim minority linguistic and educational rights. The practical consequence of such policies is the progressive disappearance of Urdu-medium schooling, which is not merely a cultural loss but an educational and economic loss for the community, since Urdu is a language of significant cultural and professional importance for Indian Muslims.

The disruption of Muslim educational institutions through demonetisation, GST, and FCRA restrictions, which have affected the funding models of privately-supported Muslim schools and colleges (maktabs and madrasas), represents an indirect but significant assault on Muslim educational rights. When the financing networks that have historically supported these

institutions are disrupted by government policy, without the provision of equivalent public funding, the practical result is the reduction of educational provision for a minority community that already faces significant disadvantages in access to quality education.

CHAPTER THIRTEEN: ECONOMIC DISCRIMINATION AGAINST MINORITIES AND DALITS

13.1 The Intersectionality of Economic and Social Discrimination

The concept of intersectionality, introduced by Kimberle Crenshaw and applied throughout this textbook, has a specific and powerful application in the domain of economic rights. For Dalits, Muslims, Adivasis, and women in India, economic disadvantage is not simply the product of market outcomes. It is the product of the interaction between market processes and social hierarchies that themselves have legal dimensions: caste discrimination that is prohibited but not eliminated, religious discrimination that has been intensifying under the current government, gender discrimination embedded in inheritance law and social norms, and geographic discrimination that concentrates economic deprivation in specific regions.

The economic status of Dalits relative to the general population remains substantially lower across all dimensions of economic wellbeing. The periodic labour force survey data consistently shows that Dalit workers are overrepresented in casual labour, in manual scavenging and sanitation work, and in low-wage informal employment, and underrepresented in professional, managerial, and technical occupations. The wage gap between Dalit and non-Dalit workers, documented in multiple econometric studies, is not fully explained by differences in education and skills, meaning that a significant component of the gap reflects direct labour market discrimination: employers paying Dalit workers less for equivalent work, or refusing to hire Dalit workers for higher-paying positions despite equivalent qualifications.

The Dalit wealth gap is even more extreme than the income gap. The historical exclusion of Dalits from land ownership, from access to credit, from educational opportunities, and from the social networks through which capital is accumulated and transmitted across generations has produced a wealth distribution that is dramatically skewed by caste. Studies using household survey data have found that Dalit households hold only a small fraction of the wealth of upper-caste households, even controlling for income differences. This wealth gap means that Dalit households are much more vulnerable to economic shocks, have much less capacity to invest in education and health, and are much less able to provide their children with the economic advantages that reproduce class position across generations.

13.2 Muslim Economic Marginalisation

The economic marginalisation of Indian Muslims is documented in a series of reports beginning with the Sachar Committee Report of 2006, commissioned by the Manmohan Singh government, which provided the first comprehensive picture of the socioeconomic status of Muslims in India. The Report found that Muslims lagged behind the general population on virtually every

socioeconomic indicator, including literacy, school enrollment, formal sector employment, access to credit, representation in government employment, and income. In many indicators, Muslim status was comparable to or worse than that of scheduled castes and scheduled tribes.

The Sachar Committee findings generated significant political discussion and led to the Rajinder Sachar follow-up initiatives and the UPA government's programs for minority development including the Prime Minister's New 15-Point Programme and the Multi-Sectoral Development Programme for Minority Concentration Districts. But the policy response was inadequate to address the structural determinants of Muslim marginalisation, and the change of government in 2014 resulted in the effective abandonment of even the modest affirmative programs that had been initiated.

Under the Modi government, Muslim economic marginalisation has intensified rather than diminished. The cow vigilantism and anti-Muslim violence discussed in earlier parts of this textbook has directly economic dimensions: the cattle trade and leather industry, which have historically been important sources of income for Muslim communities, have been devastated by the combination of cow protection laws, vigilante violence against cattle traders, and the closure of slaughterhouses. The demolition of Muslim businesses and homes, documented in the bulldozer justice section, represents direct economic destruction through state action. The harassment of Muslim businesses through tax raids and regulatory investigations, which has been documented in multiple states, creates a climate of economic insecurity that discourages Muslim entrepreneurship and investment.

The employment discrimination against Muslims in the formal sector, documented in field experiments and survey data, means that even well-qualified Muslim job applicants face discrimination in private sector hiring. The Oxfam India Discrimination Report of 2022 found that Muslim job applicants were less likely to receive callbacks to job applications than applicants with Hindu names, even when the qualifications were identical. This pattern of labour market discrimination, combined with the structural exclusion from public sector employment driven by the absence of reservation for Muslims (they are not classified as scheduled castes, scheduled tribes, or other backward classes for the purposes of reservation in most states, though some states have separate backward class reservation for OBC Muslims), produces the comprehensive economic marginalisation that the Sachar Report documented and subsequent research has confirmed continues.

13.3 Adivasi Economic Rights and the Extractive Economy

Adivasi economic rights are most fundamentally threatened by the extractive economy's demand for the mineral resources that lie beneath their ancestral lands. The economic relationship between the Indian state, corporate extractive industries, and Adivasi communities is one of systematic dispossession: the state facilitates the transfer of resources from Adivasi communities to corporations, and the corporations transfer profits to shareholders, while Adivasi communities receive inadequate compensation for the destruction of their livelihoods, the contamination of their environment, and the disintegration of their social fabric.

The Forest Rights Act was designed in part to address this dynamic by requiring gram sabha consent before forest land can be diverted for non-forest purposes including mining. But the implementation of the consent requirement has been systematically subverted. State governments and corporations have pressured gram sabhas to grant consent under duress, obtained consent through fraudulent or incomplete disclosure of project impacts, and proceeded with projects despite rejection by gram sabhas. The Environmental Impact Assessment process, which is supposed to assess the social and environmental impacts of proposed projects and involve affected communities in decision-making, has been systematically weakened since 2014 through regulatory amendments that reduce the scope of assessment, shorten the consultation period, and exempt many categories of project from full assessment.

The Human Rights Watch and various Indian civil society reports have documented specific instances of Adivasi communities being dispossessed for mining projects in states like Odisha, Jharkhand, and Chhattisgarh, with inadequate compensation, inadequate rehabilitation, and subsequent poverty, social disintegration, and health deterioration. The Posco case in Odisha, in which the government attempted for over a decade to acquire land for a South Korean steel plant against the determined resistance of affected Adivasi communities, and which ultimately collapsed when the company withdrew in 2017, represents both the tenacity of community resistance and the length of time that such resistance requires against the combined weight of state and corporate pressure.

CHAPTER FOURTEEN: INDIA'S INTERNATIONAL ECONOMIC OBLIGATIONS - ICESCR AND BEYOND

14.1 The Obligation of Non-Retrogression

The principle of non-retrogression under the ICESCR is perhaps the most directly applicable standard against which to evaluate several of the recent Indian policy developments documented in this Part. The UN Committee on Economic, Social and Cultural Rights has clarified in multiple General Comments that while progressive realisation allows states to implement rights incrementally, states are prohibited from taking deliberately retrogressive measures, meaning measures that intentionally reduce the level of rights enjoyment already achieved. Where a state has taken retrogressive measures, it bears the burden of justifying them as necessary and proportionate to the achievement of other legitimate goals.

The abolition of MGNREGA's employment guarantee, the weakening of labour protections through the Labour Codes, the privatisation of public enterprises that reduces the reach of reservation, the reduction of public health expenditure in real terms, the hollowing out of the Forest Rights Act's implementation, and the dismantling of environmental protections that expose poor communities to pollution and displacement are all potentially retrogressive measures. Each requires justification as necessary and proportionate in order to comply with India's ICESCR obligations. The government's arguments that these measures are necessary to promote economic growth, attract investment, and improve long-term prosperity do not constitute adequate justification under the ICESCR standard, which requires that the measures be

shown to be necessary in the sense that no less retrogressive alternative was available, and that they protect the minimum core of Covenant rights even during periods of reform.

The minimum core concept, developed in General Comment 3 and applied in subsequent Comments, identifies the minimum essential levels of each right that states must ensure regardless of resource constraints. For the right to food, the minimum core is freedom from hunger. For the right to health, the minimum core includes access to basic primary healthcare and essential medicines. For the right to education, it includes universal access to free primary education. India's performance against these minimum core standards is deeply inadequate in multiple dimensions, as documented throughout this Part.

14.2 The ILO Framework and India's Ratification Gaps

The International Labour Organisation has developed a comprehensive framework of international labour standards through its conventions and recommendations. India has ratified forty-seven ILO conventions, including six of the eight fundamental conventions. The fundamental conventions not ratified by India are Convention 87 on Freedom of Association and Protection of the Right to Organise, and Convention 98 on the Right to Organise and Collective Bargaining. The non-ratification of these two fundamental conventions is particularly significant because the Labour Codes' restrictions on union recognition and the right to strike would clearly violate these conventions if India were a party to them.

India has also not ratified Convention 169 on Indigenous and Tribal Peoples, which provides the most comprehensive international legal framework for the protection of indigenous peoples' rights including their land and resource rights. The non-ratification of Convention 169 means that Adivasi communities cannot invoke this Convention directly in domestic proceedings, though its provisions are relevant to the interpretation of constitutional protections and ICESCR obligations.

The ILO's Committee of Experts on the Application of Conventions and Recommendations has raised concerns in its periodic reviews about India's implementation of the conventions it has ratified. Specific concerns have been raised about the adequacy of enforcement of the Worst Forms of Child Labour Convention (Convention 182, ratified by India), about conditions of bonded labour that violate the Forced Labour Convention (Convention 29, ratified by India), and about restrictions on trade union rights that may be inconsistent with Convention 100 on Equal Remuneration (ratified by India).

The EU-India Free Trade Agreement negotiations, which were ongoing as of early 2026, raise specific concerns about the relationship between trade liberalisation and labour rights. The EU's Trade and Sustainable Development chapters in its free trade agreements typically require parties to ratify and effectively implement core ILO conventions. India's non-ratification of ILO Conventions 87 and 98 is a potential obstacle to a comprehensive trade deal and is an area where the EU has publicly sought Indian commitments. The March 2026 Business and Human Rights Journal analysis on the EU-India Trade Deal noted that while the agreement represented a start, turning sustainability promises into impact would require far more than initial commitments, and

specifically called out the need for enforcement mechanisms rather than merely aspirational language.

14.3 The UN Special Procedures and India's Resistance

The UN special procedures, which consist of thematic Special Rapporteurs, Independent Experts, and Working Groups with mandates to investigate and report on specific human rights issues, have repeatedly attempted to engage with India on economic rights issues. India has consistently resisted this engagement, refusing or delaying official visits by Special Rapporteurs, dismissing their reports as politically motivated, and failing to respond adequately to their communications.

The UN Special Rapporteur on Extreme Poverty and Human Rights has sought to visit India on multiple occasions to investigate poverty and inequality, and has not received an invitation. The Special Rapporteur on the Right to Food has engaged with India's food security situation and raised concerns about malnutrition that India has not adequately addressed. The Special Rapporteur on Indigenous Peoples has raised concerns about Adivasi land rights and displacement that India has dismissed as interference in internal affairs.

The UN Human Rights Committee's July 2024 concluding observations on India's ICCPR compliance, while focused on civil and political rights, noted connections between civil and political rights violations and economic rights: the Committee's concerns about internet shutdowns, for example, explicitly referenced the impact of shutdowns on access to food rations and livelihoods for marginalised communities. This connection between civil and political rights and economic rights, which mainstream rights theory sometimes obscures, is vividly illustrated in India's specific context.

CHAPTER FIFTEEN: THE POLITICAL ECONOMY OF VIOLATION - WHO BENEFITS?

15.1 The Class Structure of Rights Deprivation

The final analytical question of this Part is not merely descriptive but structural: why does India's rights deprivation persist? If the violations documented in this Part and throughout this textbook are as severe, as systematic, and as well-documented as the evidence shows, why does the political system not generate corrective responses? The answer requires a political economy analysis that identifies who benefits from the continuation of the status quo and who bears its costs.

The beneficiaries of India's economic rights failures are, as a structural matter, those who profit from the availability of cheap, unprotected, and easily dismissed labour. The large landowner who employs agricultural labourers at below minimum wage benefits from the non-enforcement of minimum wage law. The construction contractor who employs migrant workers without contracts, safety equipment, or social security contributions benefits from the absence of effective labour inspection. The platform company that classifies workers as independent

contractors benefits from the absence of a legal framework requiring employment reclassification. The pharmaceutical company that charges market prices for essential medicines benefits from the absence of a public procurement system that would reduce their margins. The private hospital that charges catastrophic fees for care that the public health system should provide benefits from the underfunding of the public system.

These beneficiaries are not passive. They are politically active, they fund political parties, they occupy positions in the bureaucracy and the judiciary, and they shape the policy environment in which rights compliance is determined. The phenomenon of regulatory capture, in which the agencies charged with enforcing rights and regulations come to serve the interests of those they are supposed to regulate, is pervasive in India's labour and environmental regulatory architecture.

The costs of economic rights deprivation fall overwhelmingly on those who are already at the bottom of India's interlocking hierarchies: Dalit agricultural labourers, Adivasi communities in mining zones, Muslim micro-entrepreneurs in cities, migrant workers on construction sites, gig workers in delivery services, women in domestic work, children in bonded labour, and the hundreds of millions of people in informal employment who lack the protections that would allow them to defend their rights.

15.2 The Hindu Nationalist Political Economy

The Modi government's economic program cannot be separated from its Hindu nationalist political project. The two are not identical, but they are deeply connected in ways that require careful analysis. The Hindu nationalist project requires a political economy that delivers sufficient growth to maintain the loyalty of the aspirational middle class, that concentrates economic power in the hands of business interests closely aligned with the BJP, that weakens the economic position of minorities (particularly Muslims) who are not part of the nationalist coalition, and that maintains the subordination of labour through weak unions and precarious employment.

The labour codes, privatisation, the weakening of the Forest Rights Act, the FCRA restrictions that have crippled civil society, and the regulatory environment that favours large politically connected corporations over small businesses and workers, all serve this political economy. The specific targeting of Muslim businesses through selective enforcement of regulations, through the violence against cattle traders and the leather industry, and through the denial of access to government contracts and schemes, is a deliberate economic element of the minority exclusion project.

The economic disempowerment of the Muslim minority is a strategic goal of the Hindu nationalist project, not a mere side effect. A Muslim community that is economically marginalized, that lacks access to credit, government employment, and formal sector jobs, that is dependent on community networks for economic survival, and that is preoccupied with immediate economic vulnerability rather than political mobilisation, is a community that is easier to dominate. The economic dimension of the Muslim exclusion project is therefore essential to understanding the political motivation for the violations documented throughout this textbook.

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15.3 International Accountability and Its Limits

The international accountability framework for economic rights violations, as applied to India, faces structural constraints that this textbook has documented throughout. India is not a party to the Optional Protocol to the ICESCR, which would allow individual complaints. India is not a party to the Rome Statute. India has not ratified ILO Conventions 87 and 98. India has resisted UN Special Procedure visits. India has used the FCRA to defund civil society organisations that might bring accountability pressure. India has weakened the media through ownership concentration and legal harassment of independent journalists.

And yet international accountability pressure has not been entirely without effect. The repeated public criticisms of India's human rights record by the UN Human Rights Committee, UN Special Rapporteurs, the EU Parliament, the US Commission on International Religious Freedom, and major international NGOs have created reputational costs that the Indian government must manage. The EU Parliament's January 2024 resolution expressing urgent human rights concerns about India, noted in the HRW 2025 World Report, represented a significant escalation of EU institutional engagement with India's rights record.

The EU-India trade negotiations provide a specific leverage point. If the EU insists on meaningful human rights and labour rights conditions in the trade agreement, including requirements for ratification of ILO fundamental conventions, effective enforcement of labour laws, and concrete anti-discrimination measures, and if it is willing to make market access conditional on compliance, this could create significant incentives for reform. The precedent of the EU's use of GSP+ trade preferences, which are conditional on ratification and effective implementation of twenty-seven international conventions including core human rights and labour rights treaties, provides a model. India currently benefits from EU market access under the standard GSP arrangement, and the leverage of a comprehensive FTA is significantly greater.

The domestic civil society organisations that have survived the FCRA crackdown, the remaining independent media, the judicial institutions that retain some independence, and the political opposition, particularly in states where the BJP does not govern, remain the primary domestic accountability mechanisms. Their capacity has been severely degraded but not destroyed. International support for Indian civil society, through diplomatic advocacy, through diaspora networks, through academic engagement, and through media coverage, remains essential to maintaining the ecosystem of accountability without which improvements in rights protection are impossible to sustain.

15.4 Toward Economic Rights Transformation: Theoretical and Practical Pathways

This Part concludes by identifying the theoretical frameworks and practical pathways through which economic rights transformation might be achieved in India, while acknowledging the immense obstacles that the political economy of the current moment places in the way of such transformation.

At the theoretical level, three insights from the literature reviewed in this Part are particularly important. First, from the capabilities approach: the measure of success in economic rights must

be actual human functioning, not formal legal provision. Policy must be evaluated not by what it says but by what it delivers in terms of the expansion of genuine freedom for the most marginalised. Second, from the structural violence framework: economic rights deprivation in India is not a residual problem of underdevelopment but a structural product of specific power arrangements. Addressing it requires changing those arrangements, not merely ameliorating their worst effects through targeted programs. Third, from the political economy of rights: economic rights transformation requires building the political power of those whose rights are most violated. Rights reform from above, whether through judicial decisions or government programs, is inherently limited and reversible. Durable change requires the organised political power of workers, Dalit communities, Adivasi communities, women, and minorities to demand and defend their rights.

At the practical legal level, several specific reforms are urgently required. First, the ratification of the Optional Protocol to the ICESCR and of ILO Conventions 87 and 98, which would create new accountability mechanisms and strengthen the legal framework for labour rights. Second, a comprehensive statutory right to a living wage, set at a level that allows workers and their families to meet their basic needs, with effective enforcement mechanisms. Third, the full and effective implementation of the Forest Rights Act, including recognition of community forest rights and genuine implementation of the consent requirement. Fourth, the restoration and strengthening of MGNREGA as a guaranteed rural employment program. Fifth, a commitment to raising public health expenditure to at least five percent of GDP within a defined time frame, with specific targets for rural healthcare infrastructure. Sixth, a statutory framework for gig and platform workers that addresses their employment status directly rather than creating a separate and inferior category.

None of these reforms is beyond India's financial or institutional capacity. India is the world's fifth-largest economy. It can afford to pay its workers a living wage, to provide its citizens with adequate healthcare, to protect its Adivasi communities from dispossession, and to maintain a genuine social safety net. The question is not capacity but political will, and political will is ultimately a question of power. The power of those who benefit from the current arrangements over those who bear its costs must shift if economic rights transformation is to occur.

CONCLUDING COMMENTARY ON PART THIRTEEN

Part Thirteen has traversed a vast landscape of economic rights theory and Indian practice, demonstrating with cumulative force that India's economic rights crisis is neither incidental nor temporary but structural and deepening.

The central argument of this Part can be stated through five propositions that mirror and extend the arguments of the preceding twelve parts.

First, economic rights are genuine rights, not aspirations. The philosophical work of Sen, Nussbaum, Pogge, Shue, Fredman, and Young has definitively established that the distinction between civil and political rights and economic and social rights, in terms of their

fundamentality, justiciability, and urgency, is not philosophically sustainable. India's constitutional architecture, which places the most important social and economic rights beyond judicial enforcement, reflects a political compromise rather than a principled distinction, and it has enabled the systematic violation of these rights by successive governments.

Second, India's development model is a systematic generator of rights violations. The specific choices embedded in India's liberalisation model, and accelerated by the Modi government, have produced growth with deepening inequality, labor market reforms that privilege employers over workers, privatisation that excludes the poor from essential services, and development programs that dispossess the most vulnerable communities. These are not failures of implementation but predictable consequences of a political economy that distributes power and resources upward.

Third, informality is the primary mechanism of labour rights deprivation. When ninety percent of the workforce is informal, labour law protections apply to a shrinking and privileged minority. The Labour Codes have not addressed this structural reality but have instead extended informality to the formal sector through fixed-term contracts and raised retrenchment thresholds. The gig economy represents the latest frontier of informality, and the regulatory response is wholly inadequate to the scale of the challenge.

Fourth, caste and religious identity intersect with economic class to produce compounded deprivation. The economic marginalisation of Dalits, Adivasis, and Muslims is not simply a matter of class disadvantage but of the intersection of class with caste hierarchy and religious discrimination that creates specific forms of exploitation and exclusion. The political economy of the Hindu nationalist project has intensified this intersection by using economic policy as an instrument of minority marginalisation and by systematically dismantling the affirmative mechanisms that have provided some corrective.

Fifth, international accountability is necessary but insufficient. The ICESCR framework, ILO conventions, UN Special Procedures, and international civil society provide important accountability resources, but India's resistance to international mechanisms, its suppression of domestic civil society, and the limits of international pressure against a large and strategically important state, mean that international accountability alone cannot drive the transformation required. Transformation requires the organised political power of those whose rights are violated, supported by an ecosystem of civil society, media, legal advocacy, and academic analysis that this textbook is part of.

Part Fourteen of this textbook will examine the role of technology, surveillance, and the digital state in both enabling and perpetuating human rights violations in India, analysing the Aadhaar infrastructure, the Digital Personal Data Protection Act, facial recognition surveillance, and the emerging framework of digital authoritarianism.

PART FOURTEEN: THE ARCHITECTURE OF IMPUNITY: SYSTEMIC COLLAPSE, INTERNATIONAL RECKONING, AND THE POLITICS OF PERMANENT EMERGENCY IN CONTEMPORARY INDIA

"A state that fears its own people enough to build an elaborate architecture of exception cannot be said to govern them. It can only be said to occupy them." Adapted from Giorgio Agamben, "State of Exception," 2005

PREFATORY NOTE TO PART FOURTEEN

This fourteenth part of the textbook arrives at a moment of profound and accelerating crisis in India's relationship with the rule of law, human rights, and the international community. The years between 2023 and 2026 have produced a cascade of developments that demand the most serious jurisprudential, philosophical, and political analysis available to the scholar of human rights. The Supreme Court of India, once celebrated internationally as one of the world's most creative and activist constitutional courts, is now the subject of a formal academic symposium titled "Crisis at the Supreme Court of India," convened by the International Association of Constitutional Law in 2025. The National Human Rights Commission of India, the body constitutionally designated to protect citizens from state abuse, has been formally recommended for downgrading from "A" to "B" status by the Global Alliance of National Human Rights Institutions, an event without precedent in the Commission's history. India's military operations in May 2025, conducted under the banner of counterterrorism following the devastating Pahalgam attack of April 22, 2025, have been formally declared by UN Special Rapporteurs to violate the UN Charter, with India failing to respond to the UN's formal inquiries within the mandated sixty-day period. And in the same extraordinary season, Indian authorities expelled nearly 1,900 Muslims and Rohingya refugees to Bangladesh and Myanmar, some of them Indian citizens, in operations that UN experts characterized as violating the foundational international law principle of non-refoulement.

Part Fourteen examines these developments not merely as discrete events but as the systemic expressions of a constitutional order that has been progressively subverted, an international legal framework that India treats with selective contempt, a regional hegemonic project that continues to destabilize neighboring states, and a political economy of Hindu nationalism that has transformed the relationship between law and power in India in ways that earlier parts of this textbook have documented but that now demand fresh synthesis. This part also engages deeply with the philosophical and theoretical frameworks that are most illuminating for this moment: the theory of "democratic backsliding" as developed by scholars like Steven Levitsky and Lucan Way, the concept of "autocratization" as analyzed by the V-Dem Institute, Agamben's theory of the "state of exception" and its application to India's permanent emergency governance, the resurgence of Schmittian political theology in Hindu nationalist thought, and the latest developments in international human rights law as applied to situations of systematic governmental oppression within a formally democratic framework.

The chapters that follow proceed through the following analytical terrain. Chapter One examines the complete judicial capitulation thesis, engaging with the most recent scholarship on the Supreme Court's transformation from a counter-majoritarian institution to a quasi-compliant organ of executive accommodation. Chapter Two provides the most comprehensive analysis available of the legal framework surrounding Operation Sindoor, the Pahalgam aftermath, and

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India's descent into acknowledged violation of the UN Charter. Chapter Three analyzes the Waqf Amendment Act, the Uniform Civil Code developments, and the broader legislative architecture of religious discrimination in contemporary India. Chapter Four examines the condition of democratic institutions broadly, including electoral manipulation, the weaponization of investigative agencies, and the systematic defunding of civil society. Chapter Five returns to the caste question with fresh theoretical tools, examining the philosophy of recognition, the jurisprudence of intersectionality, and the latest documented patterns of Dalit and Adivasi persecution in 2024 and 2025. Chapter Six provides a comprehensive analysis of India's treatment of its neighbors, focusing on Bangladesh, Nepal, Myanmar, and Sri Lanka, and connecting the domestic architecture of rights violation to the external architecture of regional hegemony. Chapter Seven addresses the theoretical question that haunts this entire textbook: is India a democracy, and what does the answer to that question mean for international human rights law and for the obligations of the international community?

CHAPTER ONE: THE JUDICIAL CAPITULATION THESIS: PHILOSOPHY, EVIDENCE, AND THE CRISIS OF CONSTITUTIONAL REVIEW

1.1 The Court as the Soul of the Constitution: The Theory and Its Betrayal

To understand the full depth of India's contemporary constitutional crisis, one must begin where B.R. Ambedkar began: with the Supreme Court as the guardian of the Constitution's fundamental guarantees. Ambedkar, in his presentation of the draft Constitution to the Constituent Assembly in 1948, described Article 32, the provision guaranteeing citizens the right to approach the Supreme Court directly for enforcement of fundamental rights, as "the very soul of the Constitution and the very heart of it." He described the Court as the custodian of the Constitution, the institution whose independence from political power was the guarantor that the paper promises of Part III would translate into lived reality for the most vulnerable.

This theory of the Court as constitutional guardian is not unique to India. It derives from the tradition inaugurated by John Marshall's judgment in Marbury v. Madison in 1803, in which the United States Supreme Court established the principle of judicial review: that courts have the authority and duty to strike down legislation that violates the constitution, regardless of how that legislation was passed or how popular it might be. The philosophical foundations of judicial review are deeply connected to the theory of rights as trumps developed by Ronald Dworkin in his influential 1977 work "Taking Rights Seriously." For Dworkin, rights function as trumps against majoritarian decision-making: they are precisely the claims that democratic majorities cannot override, the irreducible core of individual dignity that the state must respect regardless of what the majority wants. A court that has genuinely internalized this function is, by definition, a counter-majoritarian institution: it stands between the individual and the state, between the minority and the majority, between the citizen and the power.

The history of the Indian Supreme Court in its better periods is, in many respects, a history of this function being performed with genuine distinction. The landmark public interest litigation jurisprudence of the 1980s, in which the Court opened its doors to representatives of the most

marginalized people in Indian society, including bonded laborers, prison inmates, street children, and pavement dwellers, was a creative constitutional achievement of the first order. The expansive reading of Article 21 to encompass social and economic rights, the development of curative petitions and the concept of constitutional remedies for systemic violations, the monitoring of welfare schemes through contempt jurisdiction, all represented the Court straining to bridge the gap between constitutional promise and social reality that Ambedkar had warned about in 1949.

But the scholarship emerging in 2024 and 2025 documents a systematic reversal of this tradition. The April 2025 article in the journal "Democratization," authored by a constitutional scholar at a leading European university, examines what it describes as "judicial powerplay: the independence of judiciary under the shadow of illiberalism." The paper's central finding is that the Supreme Court of India, previously known as a belligerent counter-majoritarian institution, is now criticized for avoiding confrontation with the executive. The paper documents how this shift has occurred not through the formal institutional capture seen in Hungary or Poland, where governments changed the composition or jurisdiction of courts through legislative action, but through a more subtle and in some ways more alarming process: the internalization by the judiciary itself of a posture of deference to executive power, driven by the dynamics of what the author calls "judicial powerplay," the strategic calculations of individual judges about their own power, prestige, and post-retirement prospects within the political ecosystem that the executive dominates.

The International Commission of Jurists published its landmark report "Judicial Independence in India: Tipping the Scale" in January 2025. The report, produced after extensive research and consultation with Indian legal practitioners, scholars, and judicial officers, makes findings that are as damning as they are carefully documented. The ICJ found that the appointment process for Supreme Court judges, which operates through the collegium system, has become increasingly susceptible to executive influence, with the government exercising pressure on the collegium through its control over the Memorandum of Procedure, through delays in acting on collegium recommendations, and through the strategic management of judicial vacancies. The ICJ documented a pattern in which collegium recommendations for candidates perceived as insufficiently favorable to the government were delayed or quietly shelved, while recommendations for judges perceived as more compliant were processed rapidly. The report concluded by calling on the Government of India and the Supreme Court to urgently take steps to ensure the independence of the Indian judiciary in line with international law and standards.

1.2 The Quantitative Evidence of Deference: What the Numbers Reveal

The theoretical critique of judicial deference to executive power is given empirical substance by a growing body of quantitative research into Supreme Court decision-making patterns in the period since 2014. This research, conducted by scholars at Indian law schools and by international institutions including the Supreme Court Observer, reveals patterns that are deeply troubling when viewed against the backdrop of the Court's historical counter-majoritarian function.

The data on bail decisions in cases involving persons accused under counterterrorism legislation is particularly revealing. In the period from 2014 to 2024, the grant rate for bail applications by persons accused under the Unlawful Activities Prevention Act (UAPA) has been consistently below ten percent. In cases involving activists, journalists, and civil society members arrested under the UAPA, the Supreme Court has frequently declined to grant bail on the grounds established in the National Investigation Agency v. Zahoor Ahmad Shah Watali judgment of 2019, which set an extraordinarily demanding standard for bail. The Court's approach to UAPA bail contrasts sharply with its more recent 2026 decision in an economic offence case, in which the Court held that the right to speedy trial is not eclipsed by the nature of the offence and that economic offences cannot be treated as a homogeneous class warranting blanket denial of bail. The message embedded in this jurisprudential inconsistency is uncomfortable but unmistakable: the right to speedy trial and to liberty matters differently depending on the political valence of the accused person's offence.

The data on constitutional challenges to major government initiatives tells a similar story. The challenge to the Citizenship Amendment Act of 2019, which introduced religious discrimination into the formal criteria of citizenship for the first time in India's history, remains pending before the Supreme Court more than six years after the Act's passage. The challenge to the effective abrogation of Article 370 in August 2019 was eventually decided against the challengers in December 2023, with the Court upholding a constitutional maneuver that most independent scholars regard as legally fraudulent, since it used the mechanism of President's Rule to bypass the requirement of consultation with the elected state legislature of Jammu and Kashmir at a moment when no elected legislature existed precisely because the central government had imposed direct rule. The challenge to the Prevention of Money Laundering Act's sweeping powers of arrest and asset seizure, which have been used systematically to harass political opponents and civil society actors, was substantially decided in favor of the government's powers in the Vijay Madanlal Choudhary judgment of 2022, a decision so broadly written in favor of the prosecution that it drew sustained criticism from senior advocates and academic lawyers.

The constitutional crisis crystallized in unprecedented form in January 2025, when the Lokpal, India's anti-corruption body, asserted jurisdiction to investigate corruption complaints against sitting High Court judges, claiming that High Court judges fall within the definition of "public servants" under the Lokpal and Lokayuktas Act of 2013. The Supreme Court's response was extraordinary: it took suo motu cognizance of the Lokpal's order and stayed it, describing the matter as one of "great significance concerning the independence of the judiciary." The incident revealed a tension between different institutional claims of authority that, in normal circumstances, would have been resolved through constitutional dialogue. In the current political environment, it became another front in the running battle between the executive and the judiciary, played out in public with an unseemly combination of institutional assertion and political calculation.

The IACL blog symposium "Crisis at the Supreme Court of India," convened in 2025 by Professor Tarunabh Khaitan, one of the most distinguished scholars of comparative constitutional law in the world, drew contributions from multiple leading scholars that converged on a common theme: the Supreme Court has experienced what amounts to an existential crisis, driven by the sustained pressure the Modi government has exerted on the judiciary since taking

office in 2014. The contributions collectively traced what Khaitan characterized as democratic decay in India, a process in which the Court has been progressively repositioned from the constitutional frontier to a position of managed accommodation with executive power.

1.3 The Philosophical Stakes: Constitutional Morality vs. Popular Morality

Ambedkar's distinction between constitutional morality and popular morality is perhaps the most important conceptual tool for understanding what is happening to the Indian Supreme Court. In his November 1948 address to the Constituent Assembly, Ambedkar warned that the greatest danger to India's constitutional democracy would be the substitution of constitutional morality by popular morality, the displacement of principled, rights-respecting constitutional norms by the preferences of the dominant majority. He attributed this insight to George Grote, the nineteenth century classical scholar who had argued that constitutional morality requires "a paramount reverence for the forms of the Constitution," not from attachment to the forms themselves, but because the forms embody the substantive values of equality, liberty, and dignity.

The philosophical framework that illuminates Ambedkar's distinction most powerfully in the contemporary context is Jurgen Habermas's theory of constitutional democracy developed in "Between Facts and Norms" published in 1996. Habermas argues that a constitutional democracy is not simply a system in which majorities rule; it is a system in which the exercise of political power is constrained by a set of legal norms that are themselves grounded in the "communicative rationality" of democratic deliberation: not what any particular majority happens to want at any given moment, but what all citizens could agree to through genuinely free and rational deliberation. In Habermasian terms, the Indian Constitution embodies, or at least aspires to embody, the results of communicative rationality, including the principle that no group may be excluded from the political community on grounds of religion, caste, or sex.

The Hindu nationalist project, which has captured the state apparatus in India since 2014, represents precisely the kind of substantive popular morality that Ambedkar warned against and that Habermas's theory would identify as the enemy of constitutional democracy. Its claim that India is essentially a Hindu nation, that the Constitution's formal secularism is a Western imposition or a temporary accommodation that must be superseded by the cultural truth of Hindu civilization, is at root a claim that popular morality, specifically the morality of the Hindu majority, should displace constitutional morality. The displacement of constitutional morality by popular morality is not always violent or dramatic. It can occur through the appointment of judges who share the majority's cultural assumptions, through the passage of laws that reflect those assumptions while formally maintaining the vocabulary of rights, and through the selective enforcement of existing laws in ways that communicate to minorities and dissenters that constitutional protections are contingent rather than absolute.

The Schmittian dimension of this process deserves careful analysis. Carl Schmitt, the German legal philosopher and Nazi intellectual, argued in "The Concept of the Political" published in 1932 and in "Political Theology" published in 1922 that the essence of political life is the distinction between friend and enemy, and that the sovereign is defined by the power to decide the "state of exception," the suspension of normal legal order in the name of emergency or necessity. Schmitt was deeply hostile to liberal constitutionalism, which he saw as an attempt to

substitute procedure and rule for the irreducibly political decision about who belongs to the political community and who does not.

Giorgio Agamben, in "State of Exception" published in 2005, extended Schmitt's analysis in a direction that is highly relevant to India. Agamben argues that the state of exception, which Schmitt conceived as a temporary and necessarily rare event, has in contemporary governance become the permanent norm: what was once an emergency has been institutionalized as a form of government. The "state of exception" is no longer exceptional; it is the standing condition of governance for certain populations and territories, who exist permanently outside the normal protection of law. Agamben's analysis maps precisely onto India's situation in Kashmir and in its various "disturbed areas," where AFSPA, the PSA, and the UAPA together create a permanent state of exception in which the normal rule of law is indefinitely suspended for the population subjected to them.

The connection between Schmitt and Hindu nationalism is not merely theoretical. Several scholars of Indian political thought have noted the structural similarity between Schmitt's friend-enemy distinction and the Hindutva movement's fundamental conceptual opposition between Hindu and non-Hindu. V.D. Savarkar, the founding ideologue of Hindutva, defined the Hindu nation in explicitly exclusionary terms: the nation consists of those for whom India is simultaneously their "pitribhumi" (fatherland) and their "punyabhumi" (holy land), a definition that by definition excludes Muslims and Christians, whose holy lands are in Arabia and Palestine respectively. This Savarkarian definition of national belonging is, at its core, a Schmittian definition: the nation is defined by the exclusion of the enemy within.

The judicial crisis is the crisis of constitutional morality confronting this Schmittian popular morality without adequate institutional resources to defend itself. The Supreme Court is not merely being pressured from outside; it is being transformed from within by the appointment of judges who have internalized, to varying degrees, the assumptions of the dominant political culture. This internal transformation is, in many ways, more dangerous than external pressure, because it is less visible and because it operates through the apparently neutral language of legal interpretation rather than through the nakedly political language of parliamentary override.

1.4 The NHRC Downgrading and the Crisis of Domestic Accountability

The recommendation by the Global Alliance of National Human Rights Institutions (GANHRI) in March 2025 that India's National Human Rights Commission be downgraded from "A" status, which indicates full compliance with the Paris Principles on national human rights institutions, to "B" status, which indicates only partial compliance, is an event of considerable symbolic and practical significance. The Paris Principles, adopted by the UN General Assembly in 1993, establish the minimum requirements for national human rights institutions: independence from government, broad mandate, adequate resources, and the capacity to receive and address individual complaints. An "A"-status institution is recognized by the UN Human Rights Council as a credible domestic accountability mechanism; a "B"-status institution is not.

The GANHRI's decision was based on concerns about the NHRC's independence, transparency, and effectiveness. The concerns were not new: civil society organizations and international

human rights institutions had been raising them for years. The NHRC is led by a former Chief Justice of India, and its composition has been criticized for being dominated by retired government officials rather than human rights practitioners or civil society representatives. Its investigative capacity has been criticized as inadequate. Its enforcement mechanism, which is limited to making recommendations to governments rather than issuing binding orders, has been widely criticized as toothless. And its record of responding to the most serious human rights violations, including in Kashmir and in cases of anti-Muslim violence, has been criticized as selective and inadequate.

The downgrading recommendation has immediate practical consequences. An institution with "B" status cannot participate in the sessions of the UN Human Rights Council as a full member, significantly limiting India's ability to use the NHRC as a diplomatic asset in international human rights forums. It also sends a powerful signal to Indian civil society and to international donors and partners about the credibility of India's domestic human rights accountability architecture. For a country that routinely invokes its domestic institutions to dismiss international criticism of its human rights record, the undermining of those institutions' international credibility is a significant development.

The jurisprudential framework for evaluating the NHRC's failures is provided by the theory of the "ombudsman" institution, developed in Scandinavian administrative law and extended to the human rights context by scholars like Linda Reif in her work "The Ombudsman, Good Governance and the International Human Rights System" published in 2004. Reif argues that for national human rights institutions to fulfill their constitutional and international function, they must be genuinely independent from the government they are meant to hold accountable; they must be accessible to the most marginalized and vulnerable people; and they must have the authority and the political will to pursue findings of violation against the state even when those findings are politically inconvenient. By all three criteria, the Indian NHRC has demonstrably failed in the period since 2014.

The parallel can be drawn with the situation of constitutional courts in other contexts of democratic backsliding. In Hungary, the Constitutional Court was packed with government-friendly judges after 2010, dramatically reducing its effectiveness as a check on executive power. In Poland, a similar process occurred after 2015, leading to sustained confrontation with the European Union over the rule of law. In both cases, the formal institutional structure remained intact while the substantive function of independent review was progressively hollowed out. The difference in India is that the hollowing-out has been achieved more subtly, through the management of appointments and the cultivation of a culture of deference within existing institutions, rather than through the dramatic formal confrontations visible in the Central European cases. The subtlety makes it harder to see and harder to challenge, but no less real in its consequences.

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CHAPTER TWO: OPERATION SINDOOR, THE PAHALGAM AFTERMATH, AND INDIA'S CONFRONTATION WITH INTERNATIONAL LAW

2.1 The Pahalgam Attack: Context, Response, and the Calculus of Rights

On April 22, 2025, armed militants attacked tourists in the Baisaran meadow near Pahalgam in the Kashmir Valley, killing twenty-six people, the majority of them Hindu tourists from other parts of India. The attack was one of the deadliest targeting civilians in Kashmir in many years and provoked a wave of grief, anger, and nationalist sentiment across India that was both understandable in human terms and, as subsequent events demonstrated, amenable to political exploitation. The identity of the attackers and the organizations responsible for ordering the attack became subjects of intense controversy, with India attributing the attack to Pakistani-backed militant organizations, specifically Lashkar-e-Taiba and Jaish-e-Mohammed, while Pakistan denied any state involvement and called for an impartial international investigation.

The legal framework within which India's response must be evaluated is well-established. The UN Charter's Article 2(4) prohibits the threat or use of force against the territorial integrity or political independence of any state. The exceptions to this prohibition are narrow: Article 51 permits individual or collective self-defense in response to an armed attack, and the Security Council may authorize enforcement action under Chapter VII. The conditions under which a state may claim self-defense in response to a terrorist attack attributed to non-state actors operating from the territory of another state have been extensively debated in international legal scholarship since the September 11, 2001 attacks on the United States and the subsequent US military action in Afghanistan.

The International Court of Justice, in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and in its 2005 judgment in the Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), significantly limited the scope of the self-defense doctrine in cases involving non-state actors. The Court held that Article 51 of the UN Charter is applicable only where an armed attack can be attributed to a state and does not permit self-defense against attacks by non-state actors operating from the territory of another state unless that state is in effective control of the attacks. The Nicaragua judgment of 1986 established the "effective control" standard, and while some scholars have argued for a lower threshold of "overall control" or "harboring," the majority view in international legal scholarship remains that a state must have something more than passive tolerance of terrorist organizations on its territory before military action against that territory can be justified under the law of self-defense.

When UN Special Rapporteurs formally reported in December 2025 that India's Operation Sindoor strikes on Pakistani territory constituted a violation of the UN Charter, they were applying this established framework. The UN experts noted that Pakistan had denied involvement in the Pahalgam attack and had demanded an impartial investigation. Despite this, India launched strikes without formally informing the UN Security Council, as would have been required under Article 51 for a legitimate self-defense action. The UN report concluded that India had engaged in a unilateral use of force on Pakistani soil that was inconsistent with the UN Charter. India was given sixty days to respond to the UN's formal inquiries and failed to do so

within the mandated period, prompting the experts to release their findings publicly without the benefit of India's response.

The Indian government's narrative of Operation Sindoor was constructed around the language of "non-escalatory" counterterrorism strikes against specific militant infrastructure. The characterization was politically effective domestically: the Prime Minister's approval ratings reportedly rose following the operation, and the media landscape, increasingly dominated by government-friendly outlets, presented the strikes as a decisive assertion of Indian military prowess and counterterrorism resolve. But the characterization cannot survive serious international legal scrutiny. Strikes on the territory of another sovereign state, whatever their military object and whatever the claimed justification, constitute an act of force under Article 2(4) of the UN Charter and require legal justification within the framework of Article 51 or Security Council authorization. Neither was adequately established in the Sindoor case.

2.2 The Suspension of the Indus Waters Treaty: Water as a Weapon of Coercion

India's response to the Pahalgam attack extended beyond the military to the hydraulic. In the days following the attack, India suspended the Indus Waters Treaty of 1960, a bilateral agreement brokered by the World Bank that had governed the sharing of the Indus river system between India and Pakistan for sixty-five years, surviving four wars, multiple crises, and periods of extreme bilateral tension. The treaty is widely regarded as one of the most successful international water-sharing agreements in history, precisely because its technical and legal framework proved durable enough to withstand the severe political tensions that have characterized the India-Pakistan relationship throughout its existence.

The suspension of the treaty was characterized by Pakistan as an "act of war" and by Pakistan's Foreign Ministry as a violation of international law. The UN Special Rapporteurs agreed: their report specifically addressed the treaty suspension, demanding that India act in good faith, cease violating Pakistan's rights under the treaty, and avoid creating human rights violations through water obstruction. The report noted that access to water is a recognized human right under international law, established by the UN General Assembly Resolution 64/292 of 2010, which declared safe and clean drinking water and sanitation as a fundamental human right. The deliberate obstruction or manipulation of water flows in a way that harms the civilian population of another state is not merely a violation of a bilateral treaty; it is a potential violation of the human rights of the civilian population dependent on those water resources.

The legal framework governing international watercourses is established primarily in the 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses, which codifies the principles of equitable and reasonable utilization, the no-significant-harm rule, and the obligation to notify and consult with other watercourse states before taking measures that may have significant adverse effects. India has not ratified this Convention, which limits but does not eliminate the applicable legal obligations, since the underlying principles also reflect customary international law as recognized by the International Law Commission and by the International Court of Justice.

The use of water as a geopolitical tool in the India-Pakistan conflict is not new. India controls the headwaters of the major rivers that flow through Pakistan, giving it enormous potential leverage over Pakistan's water security. The Indus Waters Treaty was designed precisely to take this leverage off the table through a permanent legal framework. India's suspension of the treaty, timed to coincide with a military crisis and explicitly connected to the Pahalgam attack, represented an attempt to re-weaponize water after sixty-five years of its successful neutralization as a tool of bilateral coercion. The attempt is legally indefensible and represents a direct threat to the water security of Pakistan's predominantly agricultural population.

The theoretical framework of water security as a human rights issue has been extensively developed since the 2010 UN resolution. The UN Committee on Economic, Social and Cultural Rights, in its General Comment 15 of 2002, had already established that the right to water is implicit in the right to an adequate standard of living under Article 11 of the International Covenant on Economic, Social and Cultural Rights, and in the right to life and health. General Comment 15 makes clear that states have an obligation to refrain from actions that would interfere with others' enjoyment of the right to water. The deliberate suspension of a water-sharing treaty in a manner calculated to threaten the water security of a neighboring state's population is, on its face, an interference with the right to water of that population by the threatening state.

2.3 The Domestic Fallout: From Pahalgam to Persecution

The human rights consequences of the Pahalgam attack and Operation Sindoor within India were as significant as the international legal consequences and more immediately visible in the lives of individual people. The pattern of what followed the attack represents a systematic violation of the rights of India's Muslim minority, conducted through multiple mechanisms of state and non-state violence, each of which merits separate analysis.

The first mechanism was the use of counterterrorism legislation against journalists, academics, and citizens who expressed any dissent from the official narrative of the Pahalgam attack or from the subsequent military operations. The Amnesty International report for 2025 documents the following: on May 9, 2025, Nagpur police arrested twenty-six-year-old Rejaz M. Siddique for allegedly criticizing Operation Sindoor on Instagram; he was charged under the UAPA, India's most severe counterterrorism legislation. On May 18, 2025, Haryana state police registered two FIRs against Ali Khan Mahmudabad, an associate professor at Ashoka University, for social media posts about Operation Sindoor, resulting in his arrest; he was accused of violations pertaining to maintaining communal harmony, incitement, and insulting religious beliefs. On April 27, 2025, Hazratganj police in Lucknow filed an FIR against folk singer Neha Singh Rathore for making what were characterized as objectionable remarks about the Pahalgam attack on social media.

The legal framework applied in these cases represents a systematic misuse of the regulatory machinery of criminal law to suppress political speech. The Supreme Court, in its landmark judgment in S. Rangarajan v. P. Jagjivan Ram decided in 1989, had established a high threshold for the restriction of speech on grounds of public order, holding that mere offensiveness or the capacity to provoke a negative reaction is insufficient justification for suppressing expression,

and that only speech that creates an immediate and proximate threat to public order can be lawfully restricted. The invocation of UAPA against a person for posting a social media comment critical of a military operation, and the filing of FIRs against academics and folk singers for expressing political opinions, cannot pass this threshold by any serious application of constitutional principles.

The second mechanism was collective punishment of the Muslim community through demolitions, evictions, and forced displacements. The OHCHR report of November 2025 documents demolitions in Gujarat and Assam following the Pahalgam attack, where thousands of Muslim homes, mosques, and businesses were destroyed. The irony that this demolition campaign followed directly on a Supreme Court judgment in 2024 that found punitive demolitions of Muslim properties unconstitutional and a violation of the rights to life and human dignity appears not to have restrained the state governments involved. The OHCHR report specifically noted that the demolitions constituted collective punishment, in violation of international humanitarian law principles that prohibit the punishment of a civilian population for the acts of others, even in time of armed conflict.

The third mechanism was the forced expulsion of Muslims identified as "illegal immigrants." The HRW World Report 2026 documents that Indian authorities illegally expelled hundreds of Bengali-speaking Muslims and Rohingya refugees to Bangladesh, with some Indian citizens among those expelled, all claiming the status of "illegal immigrants." Nearly 1,900 Muslims and Rohingya refugees were expelled in the period following the Pahalgam attack. The OHCHR report characterized these expulsions as violating the international obligation of non-refoulement, which prohibits returning individuals to countries where they risk persecution, arbitrary deprivation of life, torture, or other serious harm. Non-refoulement is a jus cogens norm, a peremptory norm of international law from which no derogation is permitted under any circumstances, including national emergency or armed conflict.

The fourth mechanism was the surveillance and harassment of Kashmiri students across Indian universities. The OHCHR report noted that Kashmiri students were subjected to surveillance and harassment following government directives requiring universities to collect their personal data. This surveillance program targeted a category of people, students, on the basis of their regional identity, Kashmir, without any individualized assessment of risk. It is a textbook example of collective punishment, ethnic profiling, and the violation of the rights to privacy and to equal treatment that are guaranteed by the ICCPR and by the Indian Constitution.

2.4 Disinformation as a Human Rights Issue: The Information Warfare Dimension

The information environment surrounding Operation Sindoor raises a set of human rights questions that are both important and under-theorized in standard international human rights law frameworks. As documented in a careful analysis by legal scholars Lavya Bhasin and Kanishk Goyal published in July 2025, both India and Pakistan engaged in exchanges of false information during the conflict period. Indian news media and social media platforms became major contributors to fake news, with television channels airing video game footage and old war clips as supposed evidence of Indian military dominance. Nearly fifteen percent of the Indian Army's

operational communication resources were reportedly devoted to battling false narratives circulating in Indian domestic media.

The human rights dimensions of this disinformation landscape are multiple. The right to information, which the Supreme Court of India has recognized as a component of the right to freedom of expression under Article 19(1)(a) of the Constitution, is violated when the information environment is so polluted by false and misleading content that citizens cannot make informed assessments of government action. The UN Human Rights Committee, in its General Comment 34 on Article 19 of the ICCPR, has stated that the right to freedom of expression includes the right to seek, receive, and impart information of all kinds. A government that enables or tolerates the systematic pollution of the information environment as a mechanism for building support for military action that would not survive informed public scrutiny is, on this reading, violating its citizens' right to information even if it is not directly producing the false content.

The Indian government's response to the information crisis was paradoxical and revealing. Government agencies repeatedly issued advisories urging citizens to verify news before sharing, suggesting efforts to counter rather than promote misinformation. But simultaneously, the government used its powers to block social media accounts, shut down internet access in Kashmir, and file FIRs against individuals who expressed dissent from the official narrative. The result was a double standard: private disinformation that supported the government's narrative was allowed to circulate freely, while accurate reporting or critical commentary that challenged the narrative was suppressed through legal action. This asymmetric regulation of the information environment is itself a violation of the principles of non-discrimination and viewpoint neutrality that are essential to a constitutionally protected right to expression.

2.5 UN Security Council Obligations and India's Pattern of Non-Compliance

India's failure to respond to the UN Special Rapporteurs' formal inquiries within the sixty-day period mandated by UN procedures is consistent with a pattern of engagement with international human rights mechanisms that has been documented throughout the Modi period and before it. As of the end of 2025, at least nineteen visit requests from UN special procedures remained pending, including one from the Special Rapporteur on torture that was first requested in 1999 and had been reiterated multiple times in the subsequent twenty-six years. India has not allowed an independent international human rights investigation in Kashmir in the thirty-five years since the insurgency began. India has not appeared before the UN Human Rights Committee to respond to its July 2024 findings without significant delay and diplomatic maneuvering.

The theoretical framework for analyzing this pattern of non-compliance is provided by Harold Koh's influential theory of "transnational legal process," developed in his 1996 article "Transnational Legal Process" and subsequently elaborated in his work on human rights compliance. Koh argues that states comply with international human rights norms not primarily because of external coercion or rational calculation of interests, but because the norms become internalized into the domestic legal and political processes through a cycle of interaction, interpretation, and internalization. The problem in India's case is that the internalization process has been deliberately disrupted: the government has constructed a political culture in which

international criticism is routinely characterized as foreign interference, in which the UN and its human rights mechanisms are dismissed as politically motivated, and in which domestic institutions that might transmit international norms into domestic practice, civil society organizations, independent media, academic institutions, are systematically defunded and discredited.

The consequence is a state that is formally subject to international human rights obligations through its treaty ratifications but that has effectively immunized itself from the accountability processes those obligations entail. This is not mere diplomatic recalcitrance; it is a calculated strategy for maintaining the freedom to violate rights without meaningful accountability, domestic or international. The strategy works because the international community, faced with a state of India's size, economic importance, and geopolitical significance, has consistently prioritized other interests over human rights enforcement. The EU's September 2025 "New Strategic EU-India Agenda," which hailed India as the world's largest democracy and a like-minded and trusted partner while deliberately overlooking India's deepening human rights crisis as documented in the HRW 2026 Report, is a paradigmatic example of this geopolitical calculation overriding human rights principle.

CHAPTER THREE: THE LEGISLATIVE ARCHITECTURE OF RELIGIOUS DISCRIMINATION: THE WAQF AMENDMENT ACT, THE UNIFORM CIVIL CODE, AND THE SYSTEMATIZATION OF MINORITY OPPRESSION

3.1 The Waqf Amendment Act 2025: Religion, Property, and State Power

The Waqf Amendment Act of 2025, passed by the Indian Parliament in a context of sustained protests from the Muslim community that led to at least three deaths and around 150 arrests when authorities deployed troops to suppress demonstrations, represents a fundamental transformation of the legal relationship between the Indian state and one of the world's largest Muslim-minority communities. To understand why the Act is so significant, one must first understand the institution of waqf, both as a jurisprudential category in Islamic law and as a legal institution in Indian positive law.

A waqf in Islamic jurisprudence is an inalienable religious endowment: the permanent dedication of an asset, usually land or real property, to a religious or charitable purpose in the name of Allah. The institution of waqf has deep roots in the Islamic legal tradition, and its theoretical foundations have been analyzed extensively by scholars including Professor Khalid Masud of the International Institute for the Study of Islam in the Modern World and Professor Amira Sonbol of Georgetown University. Waqf is not merely a legal instrument of property dedication; it is an expression of the Islamic concept of sadaqah jariyah, ongoing charity, through which the donor's spiritual benefit continues as long as the endowed property serves its dedicated purpose. The theological roots of the institution make it particularly sensitive to external state regulation.

In Indian positive law, waqf has been governed since independence by the Waqf Act of 1995, which established Waqf Boards in each state, gave statutory recognition to waqf properties, and

created a system of administration and dispute resolution for waqf matters. The system was imperfect, and there were genuine administrative problems including disputes over property boundaries, competing claims, and inadequate record-keeping. However, the system broadly recognized the principle of autonomy in the management of waqf properties, consistent with the constitutional guarantee of the right of religious denominations to manage their own affairs in matters of religion under Article 26 of the Indian Constitution.

The 2025 amendment fundamentally altered this framework by centralizing state control over Muslim waqf assets and endowments in India. The Amnesty International annual report for 2025 characterized the law as centralizing state control over Muslim assets and endowments, a description that captures the essential transformation. The Act introduced new mechanisms for government oversight and approval of waqf administration, altered the composition of Waqf Boards to include non-Muslim members, restricted the categories of property that could be recognized as waqf, and introduced new provisions for the survey and registration of waqf properties that critics argued would facilitate their reclassification and effective dispossession.

The constitutional challenge to the Waqf Amendment Act rests on several grounds. Under Article 25 of the Constitution, all persons have the right to freely profess, practice, and propagate religion, subject to public order, morality, and health. Under Article 26, every religious denomination or section thereof has the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion. The Supreme Court has consistently held that Article 26 protects the autonomy of religious communities in the management of genuinely religious affairs, even as it allows state regulation of the secular aspects of religious institutions. The question of whether waqf administration falls within the "matters of religion" protected by Article 26 has been extensively debated in Indian constitutional jurisprudence.

The precedential framework is complex. In the Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt case of 1954, the Supreme Court developed the essential/non-essential doctrine, which holds that Article 26 protects religious practices that are "essential" to the religion but not those that are merely traditional, incidental, or secular in character. The application of this doctrine to waqf is contested: some scholars argue that waqf administration is primarily a secular activity subject to state regulation, while others argue that the theological foundations of the waqf institution make it inseparably religious, protected by Article 26's autonomy guarantee.

But the constitutional challenge to the Waqf Amendment Act goes beyond the essential practices doctrine. The Act's substantive effect, regardless of the legal form through which it is achieved, is to subject one religious community's property to a degree of state control that is not applied to the property endowments of any other religious community. Hindu temples and their endowments in states like Tamil Nadu, Andhra Pradesh, and Telangana are administered by state-appointed bodies under the Hindu Religious and Charitable Endowments Acts. But the degree of state control exercised over waqf properties by the 2025 amendment exceeds what is applied to Hindu religious endowments. This differential treatment raises serious questions under Article 15's prohibition of discrimination on grounds of religion, which applies to the state's legislative acts and not merely to administrative discrimination.

The international human rights framework on freedom of religion is elaborated primarily in Article 18 of the ICCPR and in the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Article 6 of the 1981 Declaration specifically protects the right of religious communities to maintain adequate places of worship and other necessary facilities, to acquire and use goods and services necessary for rites and ceremonies, and to manage community institutions. State action that undermines the financial basis of a religious community's institutional life by subjecting its endowments to discriminatory regulatory control is inconsistent with these protections.

3.2 The Uniform Civil Code: Secularism as Uniformity vs. Secularism as Pluralism

The introduction of a Uniform Civil Code in Uttarakhand in January 2025, which mandates rules for civil matters including marriage, divorce, and inheritance on a common basis regardless of religious affiliation, and which introduced the controversial provision requiring the registration of all live-in relationships, represents the first state-level implementation of a proposal that has been debated in India since before independence and that has particular significance for the Muslim community, which has traditionally been governed in personal law matters by classical Islamic jurisprudence as codified in the Muslim Personal Law (Shariat) Application Act of 1937.

The debate about the Uniform Civil Code touches some of the deepest questions in constitutional theory about the relationship between law, culture, and religious identity. Article 44 of the Indian Constitution directs the state to "endeavor to secure for the citizens a uniform civil code throughout the territory of India," but this is a Directive Principle, not an enforceable right, and its implementation requires careful attention to the fundamental rights guarantees that are justiciable. The debate between advocates of the UCC and defenders of personal law pluralism is, at its philosophical core, a debate between two different models of secularism.

The first model, which might be called "uniform secularism" or the "French model," holds that secularism requires the equal treatment of all citizens as individuals under a single system of law, without differentiation based on religious identity. On this view, the existence of multiple personal law systems, one for Hindus, one for Muslims, one for Christians, one for Parsis, is itself a form of communalism that entrenches religious identity as a legal category and treats citizens not as equal individuals but as members of religious communities.

The second model, which might be called "pluralist secularism" or the "Indian model" as originally conceived, holds that secularism requires the equal respect of all religious traditions, which may in practice mean allowing different communities to govern their internal affairs according to their own traditions, subject to the constitutional requirement that these traditions do not violate fundamental rights. On this view, a Uniform Civil Code imposed by the Hindu-majority state on Muslim, Christian, and other minority communities represents not secularism but majoritarianism dressed in secular clothing.

The philosophical framework most useful for evaluating these competing positions is that of Will Kymlicka, whose work "Multicultural Citizenship" published in 1995 argues for a theory of group-differentiated rights that allows culturally distinct communities to maintain their internal normative systems, provided that the overall political community guarantees adequate individual

exit rights to members of those communities who wish to leave. Kymlicka's framework is useful precisely because it insists on the individual rights dimension: cultural autonomy is not a license for community oppression of individual members, particularly women, who have historically been the most constrained by the gendered provisions of religious personal law systems.

The Uttarakhand UCC's requirement that all live-in relationships be registered with state authorities represents a remarkable and troubling intrusion into the most intimate dimensions of personal and sexual life. The stated rationale, the prevention of fraudulent religious conversions through marriage, is transparently pretextual: the concern about "love jihad," the baseless claim propagated by Hindu nationalist organizations that Muslim men are systematically seducing and converting Hindu women through romantic relationships, is a conspiracy theory that has been comprehensively debunked by independent investigations but that continues to animate state legislation in BJP-governed states. The registration requirement, far from protecting women, functions primarily as a mechanism of surveillance over interfaith relationships, communicating to Hindu women who enter into relationships with Muslim men that the state regards their relationship as inherently suspect. This is precisely the kind of "stereotype perpetuated by the community about its women," to use the language of feminist legal scholar Catharine MacKinnon, that a genuine equal rights framework must challenge rather than enforce.

Rajasthan's proposed legislation in February 2025, criminalizing consensual inter-faith marriages that involved conversion and proposing ten years of imprisonment for those found guilty, goes even further. It directly criminalizes the exercise of the rights to marriage and to religion that are guaranteed by the ICCPR and by the Indian Constitution. Article 23 of the ICCPR explicitly protects the right of men and women of marriageable age to marry, and the Human Rights Committee has interpreted this to include the right to marry someone of a different faith. The criminalization of inter-faith marriage involving religious conversion cannot be reconciled with these international obligations.

3.3 Anti-Conversion Laws and the Criminalization of Apostasy

The proliferation of anti-conversion legislation in BJP-governed states is one of the most significant developments in the architecture of religious discrimination in contemporary India. The United Christian Forum recorded 834 attacks against Christians in 2024, compared to 127 in 2014, a more than six-fold increase over the decade of BJP national governance. These attacks occurred in the context of a legislative environment in which twelve states have enacted laws criminalizing what they describe as "forced" or "fraudulent" religious conversion.

The legal framework of these laws is deceptive in its formal neutrality: they do not, on their face, prohibit conversion as such, but only conversion that is achieved through force, fraud, allurement, or undue influence. In practice, as documented by the Indian Christian Council and by international human rights organizations, the laws have been used primarily against Christian missionaries and pastors who conduct what is, by any objective measure, peaceful religious outreach. The definition of "allurement," which in many state versions of the legislation includes the provision of food, medicine, or education as inducements to convert, is broad enough to cover the normal charitable activities of religious institutions. The mere filing of a complaint

under these laws, regardless of its ultimate merit, is sufficient to trigger police investigation, arrest, and the disruption of religious activities.

The international human rights framework on religious conversion is unequivocal. The UN Special Rapporteur on freedom of religion or belief has consistently affirmed that the right to freedom of religion or belief includes the right to change one's religion or belief, as explicitly stated in Article 18(1) of the ICCPR. The Human Rights Committee, in its General Comment 22 on Article 18, has stated that Article 18 protects the right to have or adopt a religion or belief, including the right "to replace one's current religion or belief with another or to adopt atheistic views." Laws that make the changing of one's religion a criminal matter, or that create legal barriers so substantial that changing one's religion becomes practically impossible, violate Article 18 of the ICCPR.

The Schmittian analysis is again relevant here. The anti-conversion laws are not primarily about protecting vulnerable individuals from fraudulent conversion, which could be achieved more narrowly without criminalizing the provision of food or medical care. They are primarily about maintaining the communal boundary between the Hindu majority and religious minorities, reinforcing the Savarkarian definition of national belonging by creating legal obstacles to the kind of religious mobility that would blur that boundary. The systematic use of state law to enforce communal boundaries is, in essence, the use of law as an instrument of ethnic and religious territorialization.

CHAPTER FOUR: THE WEAPONIZATION OF STATE INSTITUTIONS: ELECTORAL MANIPULATION, INVESTIGATIVE AGENCIES, AND THE DEFUNDING OF DEMOCRACY

4.1 The Electoral Rolls Crisis and Democratic Representation

The legal crisis over the Special Intensive Revision (SIR) of electoral rolls that was challenged before the Supreme Court in 2025 and 2026 represents a particularly acute threat to the foundational democratic right of political participation. As documented in the Supreme Court Observer's analysis of the Association for Democratic Reforms v. Union of India case, the SIR exercise raised concerns that it was being used to delete millions of voters, often from certain demographics and regions, without due process. The Supreme Court, through a series of hearings, directed that the exercise comply with due process requirements, including personal notice to affected individuals, adequate time for hearings, and public disclosure of proposed deletions.

The theoretical framework for understanding electoral manipulation as a human rights violation is provided by Article 25 of the ICCPR, which guarantees every citizen the right to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage. The Human Rights Committee, in its General Comment 25, has stated that states must take effective measures to ensure that persons entitled to vote are able to exercise that right, and that any

conditions attached to the right to vote must be based on objective and reasonable criteria. The selective deletion of voters from electoral rolls, particularly when the deletions disproportionately affect minority communities and opposition strongholds, is the kind of manipulation of the electoral process that the ICCPR's protections are designed to prevent.

The deeper philosophical issue is about the relationship between formal democracy and substantive democracy. A state that holds regular elections but systematically manipulates the composition of the electorate through selective deletion of voters, through gerrymandering, through differential application of voter ID requirements, or through the suppression of minority community participation is not a democracy in any substantive sense. It is what political scientists have called an "electoral autocracy" or a "competitive authoritarian regime," a system in which the formal apparatus of democratic competition is maintained while its substance is systematically subverted through the incumbent's control of the rules of the game.

The concept of "electoral autocracy" has been developed most influentially by Steven Levitsky and Lucan Way in their 2002 article "The Rise of Competitive Authoritarianism" and in their subsequent book "Competitive Authoritarianism: Hybrid Regimes After the Cold War" published in 2010. Levitsky and Way define competitive authoritarian regimes as systems in which democratic institutions are sufficiently robust to create meaningful arenas of contestation but are regularly violated by incumbents seeking to maintain their advantage. The key characteristic of competitive authoritarianism is that elections are real but not free and fair: incumbents use state resources, legal mechanisms, and coercive tools to tilt the playing field decisively in their favor while maintaining enough formal democratic procedure to avoid international sanction.

The V-Dem Institute's classification of India is relevant here. The Varieties of Democracy (V-Dem) project at the University of Gothenburg, which produces the most comprehensive and methodologically rigorous comparative data on democratic quality in the world, classified India as an "electoral autocracy" as of 2021, moving it from the "liberal democracy" category it had occupied for decades. The classification reflects the V-Dem project's composite assessment of multiple dimensions of democratic quality, including electoral integrity, civil liberties, freedom of the press, rule of law, and institutional checks and balances. India's score on most of these dimensions has deteriorated significantly since 2014.

4.2 The Enforcement Directorate and the Criminalization of Political Opposition

The Enforcement Directorate (ED), India's financial crimes investigative agency, has emerged as perhaps the most potent weapon in the ruling party's arsenal of political repression. The ED's mandate, under the Prevention of Money Laundering Act of 2002, is to investigate and prosecute financial crimes including money laundering, foreign exchange violations, and attached offences. Under the Modi government, the ED's operational profile has changed dramatically: it has become an instrument of political harassment, targeting opposition politicians, critical journalists, and civil society leaders with investigations that are often initiated without credible evidence of financial crime and that proceed at speeds calibrated to the electoral calendar.

The data on the ED's operations is revealing. According to an analysis by the Hindustan Times, between 2014 and 2022 the ED registered approximately 5,300 PMLA cases, an extraordinary increase from the approximately 112 cases registered in the period between 2004 and 2014. The rate of conviction in ED cases is remarkably low: according to data provided to Parliament, only around 0.5 percent of ED cases result in conviction, suggesting that the vast majority of investigations are not based on sufficient evidence to sustain criminal prosecution but serve their purpose of harassment and disruption regardless of ultimate legal outcome.

The Supreme Court, in its 2026 decision in the bail case concerning a person accused of money laundering charges, acknowledged that the right to speedy trial is not eclipsed by the nature of the offence and that economic offences cannot be treated as a homogeneous class warranting blanket denial of bail. This decision, however welcome in principle, came against a backdrop in which the Court had in 2022, in the Vijay Madanlal Choudhary case, substantially upheld the PMLA's sweeping powers, including the power of the ED to arrest without a traditional arrest warrant, to treat the bail provision's conditions as creating a near-presumption of guilt, and to reverse the normal burden of proof in bail proceedings by requiring the accused to establish innocence rather than the prosecution to establish guilt. The tension between the 2022 upholding of ED powers and the 2026 assertion of the right to speedy trial reflects the Court's internal contradictions on this issue, contradictions that the government has exploited by pressing for maximum prosecutorial advantage while the case law remains inconsistent.

The international human rights framework is clear. The UN Working Group on Arbitrary Detention has consistently held that pre-trial detention that serves political purposes rather than the legitimate aims of ensuring the accused's presence at trial or preventing interference with the course of justice constitutes arbitrary detention in violation of Article 9 of the ICCPR. The pattern of ED cases in India, where prominent opposition politicians are arrested shortly before elections, where bail is systematically denied for years despite minimal prospects of conviction, and where the investigation serves to keep political opponents out of circulation, falls squarely within this definition of arbitrary detention.

4.3 Press Freedom and the Systematic Silencing of Critical Journalism

India's press freedom ranking in the Reporters Without Borders World Press Freedom Index has been in steady decline throughout the Modi period: India ranked 161st out of 180 countries in 2023, making it one of the most dangerous countries in the world for journalism. The mechanisms of press suppression are multiple and reinforcing.

The first mechanism is direct legal action. The pattern documented in Amnesty International's 2025 report includes: the Maharashtra state police filing an FIR against comedian Kunal Kamra for a parody in his stand-up show "Naya Bharat" (New India) on March 24, 2025; the arrest of Assam journalist Dilwar Hussain Mozumdar in March 2025 for reporting on a protest over alleged financial misconduct at a bank where the chief minister is a director; the issuance of notices by a Gujarat court to journalists Abhisaar Sharma and Raju Parulekar for reporting on the sale of Assam land to the Adani group for what appeared to be a meager price; and the raiding of the office of Kashmir Times, run by journalist Anuradha Bhasin, by the Jammu and Kashmir State Investigation Agency following the Delhi Red Fort bombing in November 2025.

Each of these cases follows the same template: a journalist reports on something that is embarrassing to the government or to individuals or corporations associated with the government; a legal mechanism is invoked, whether an FIR for defamation, for violation of the Information Technology Act, for allegedly threatening national security, or for contempt of court; and the resulting legal process, regardless of its ultimate outcome, functions to deter other journalists from pursuing similar stories. The chilling effect of even unsuccessful prosecution is profound and well-documented in the media freedom literature.

The second mechanism is the economic strangulation of independent media through advertising. The Indian government is the largest single advertiser in the country, and the selective withdrawal of government advertising from media outlets that publish critical coverage is a well-established and extensively documented mechanism of editorial influence. The Editors' Guild of India has repeatedly documented cases in which state governments have withdrawn advertising from outlets that published critical coverage, effectively punishing journalistic independence with economic sanction.

The third mechanism is ownership consolidation. The concentration of Indian media ownership in the hands of a small number of large conglomerates with significant business interests that require government approval, regulatory clearance, or government contracts has profoundly shaped editorial culture. The Adani group's acquisition of NDTV, once one of India's most editorially independent television channels, through a controversial process in 2022 is the most visible example of a broader pattern in which economically powerful figures associated with the ruling party have acquired significant media assets, creating structural incentives for editorial self-censorship.

The legal framework for press freedom in India includes the fundamental right to freedom of speech and expression under Article 19(1)(a), which the Supreme Court has consistently held to include freedom of the press. The Court in Union of India v. Association for Democratic Reforms in 2002 held that the right of citizens to receive information about the antecedents of candidates for political office flows directly from Article 19(1)(a). The systematic suppression of press freedom through the mechanisms described above is inconsistent with the spirit and purpose of this fundamental right, even where individual acts of suppression are technically within the letter of the permitted restrictions under Article 19(2).

The international human rights framework is established in Article 19 of the ICCPR and elaborated in the Human Rights Committee's General Comment 34, which states that any restrictions on freedom of expression must be provided by law, be proportionate to their stated aim, and be necessary in a democratic society for one of the listed purposes. The use of broadly framed criminal provisions, including defamation, sedition-equivalent provisions, and contempt of court, to suppress political commentary and journalistic investigation cannot meet the requirement of proportionality and necessity under international human rights law.

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CHAPTER FIVE: CASTE, INTERSECTIONALITY, AND THE PERPETUATION OF STRUCTURAL VIOLENCE: DALITS, ADIVASIS, AND THE POLITICS OF RECOGNITION

5.1 The Jurisprudence of Recognition and Its Failures in India

The philosophical framework of "recognition" as a distinct category of justice, developed most influentially by Charles Taylor in his 1994 essay "The Politics of Recognition" and by Axel Honneth in "The Struggle for Recognition" published in German in 1992 and in English in 1995, offers an important supplement to the redistributive framework that dominates most discussions of economic and social rights. Taylor argues that alongside the politics of universal dignity, which demands equal respect for all persons as such, there is a politics of difference, which demands recognition of the particular identities, cultures, and traditions of distinct communities. Honneth, drawing on Hegel's analysis of self-consciousness and its development through recognition by the other, argues that the violation of recognition, what he calls "disrespect," is the fundamental category of injustice, encompassing physical abuse, denial of legal recognition, and degradation of social standing.

The application of recognition theory to the situation of Dalits in India reveals a dimension of the human rights crisis that purely economic or procedural analyses miss. The experience of caste discrimination is not merely economic, though it has profound economic dimensions. It is also an experience of systematic non-recognition: of being treated, on account of birth, as fundamentally less than fully human, as polluting, as unworthy of sharing physical space with "purer" caste members, as unsuitable for religious practice, civic life, or political participation. The violence of untouchability is the violence of denial of recognition, and it continues to operate in India in the twenty-first century, despite formal constitutional prohibition.

The National Crime Records Bureau data for 2023, published in 2024, recorded 57,582 crimes against Scheduled Castes, an average of more than 157 per day. The categories of crime include murder, rape, assault, arson, and forcible occupation of property. The data undercounts the actual incidence of caste-based violence for multiple reasons that are well-established in the sociology of crime reporting in India: police belonging to dominant castes frequently refuse to register complaints from Dalit victims; Dalit complainants face social and economic pressure not to report crimes; and the victims' communities frequently lack the legal literacy and political connections necessary to navigate the formal complaint process. Independent researchers have consistently found that the actual incidence of caste-based violence is several times the officially recorded figure.

The most recent documented pattern of caste violence in 2024 and 2025 shows particular concentration in Uttar Pradesh, Rajasthan, Bihar, Madhya Pradesh, and Haryana, the so-called "BIMARU" states that combine high levels of poverty, low levels of social development, and deeply entrenched caste hierarchy. In Uttar Pradesh, the Yogi Adityanath government has been documented using the police apparatus in ways that disproportionately criminalize Dalit men while providing impunity to upper-caste perpetrators of caste-based violence. The bulldozer demolitions that have become a signature policy tool of several BJP-governed states, in which government machinery is used to demolish the homes of accused persons before any conviction

or in some cases before any charge, have been documented to fall disproportionately on Dalit and Muslim neighborhoods.

The Supreme Court's 2024 judgment holding punitive demolitions unconstitutional is significant, but its implementation has been inconsistent, as the post-Pahalgam demolitions in Gujarat and Assam demonstrate. The gap between the Court's constitutional pronouncement and state governments' conduct illustrates the fundamental structural problem of Indian constitutional federalism in the rights context: the Supreme Court can articulate rights and strike down violations, but it lacks the enforcement apparatus to ensure that state governments comply with its judgments. The compliance literature on constitutional courts in federal systems, including Gerald Rosenberg's classic study "The Hollow Hope" published in 1991, has consistently documented the limits of judicial power in producing social change without complementary political and institutional support. In India's current political environment, where the BJP controls or influences most major state governments, that complementary support is absent.

5.2 Intersectionality, Dalit Women, and the Compounding of Violation

The theory of intersectionality, introduced by legal scholar Kimberle Crenshaw in her influential 1989 article "Demarginalizing the Intersection of Race and Sex" and subsequently developed into a comprehensive analytical framework, argues that the experiences of people who belong to multiple marginalized groups cannot be understood as simply the sum of their separate experiences of marginalization. A Dalit woman experiences not merely racism (or casteism) plus sexism; she experiences a specific form of oppression that emerges from the intersection of caste and gender in ways that neither category alone can capture.

The application of intersectionality theory to the situation of Dalit women in India is devastating in its implications. Dalit women face sexual violence from upper-caste men at rates that are documented to be significantly higher than the already alarming rates of sexual violence against women generally. The Hathras gang rape and murder case of 2020, in which a twenty-year-old Dalit woman was gang-raped by upper-caste men, subsequently died of her injuries, and was cremated at night by the police against her family's wishes in what appeared to be an attempt to destroy evidence, generated enormous national and international attention. But the attention did not translate into systemic change: the accused were acquitted by the Allahabad High Court in 2024, in a judgment that was widely criticized by legal scholars and women's rights organizations for its treatment of the survivor's testimony.

The Hathras case is representative rather than exceptional. The National Family Health Survey data consistently documents that Scheduled Caste women experience higher rates of sexual and domestic violence than women from other communities, and that their access to justice for that violence is more severely impaired by barriers including police refusal to register complaints, lack of legal representation, family and community pressure to remain silent, and hostile treatment by courts. The intersection of caste, gender, and poverty creates a compound vulnerability that the Indian legal system is structurally incapable of addressing through existing mechanisms.

The feminist critique of Indian rape law, even as reformed by the Criminal Law Amendment Act of 2013 following the Delhi gang rape of 2012, is that the reforms addressed the formal legal definition of rape and the sentencing framework without adequately addressing the structural barriers to justice that make the formal law effectively inaccessible to the most vulnerable survivors. The requirement that a survivor report to a police station where the officer in charge is frequently male, frequently of a higher caste than the survivor, frequently skeptical of the complaint, and frequently connected by community ties to the accused, is a barrier that formal legal reform cannot overcome without complementary institutional transformation. That transformation has not occurred.

5.3 Adivasi Rights, Forest Dispossession, and the Neoliberal Development Paradigm

The situation of India's approximately 104 million Adivasi people, the Scheduled Tribes who are officially recognized as indigenous communities, represents one of the most systematic and large-scale human rights crises in the world, distinguished primarily by the international community's failure to treat it with the seriousness it deserves. The crisis is driven by a development model that treats Adivasi ancestral territories as sacrifice zones for extractive industry, displacing communities from their land in the name of national development, and using state force to suppress resistance.

The Forest Rights Act of 2006, formally titled the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, was designed to correct what the preamble to the Act itself describes as "historical injustice" done to forest-dwelling tribal communities, who had lived in and depended on forest lands for millennia and whose customary rights to those lands had been systematically denied by colonial and post-independence forest administration. The Act recognized the rights of forest-dwelling communities to cultivate and reside in forest lands, to collect and use minor forest produce, to protect and regenerate forest and wildlife, and to participate in the management of conservation areas.

The implementation of the Forest Rights Act has been, by virtually all independent assessments, deeply inadequate. The Act requires the formation of gram sabhas (village assemblies) to process and verify rights claims; the gram sabhas in many states have been bypassed, pressured, or overridden by forest officials and district administrators who have a structural interest in maintaining the forest bureaucracy's control over forest lands. The conversion of forests to industrial uses, for mining, hydropower, thermal power, and other projects, has continued at a rapid pace despite the Act's requirements, in many cases without the free, prior, and informed consent of affected communities that both the Forest Rights Act and the United Nations Declaration on the Rights of Indigenous Peoples require.

The UNDDRIP, adopted by the UN General Assembly in 2007, establishes the international standard for the treatment of indigenous peoples. India voted against the Declaration in 2007, then changed its position and endorsed it in 2009. But endorsement has not been followed by implementation: the principle of free, prior, and informed consent, which UNDRIP establishes as the fundamental requirement for any development project affecting indigenous lands, is routinely honored in the breach in India. The National Human Rights Commission's own reports have documented the systematic displacement of Adivasi communities from forest lands, often

through the use of Forest Department officials acting in concert with state police forces, without legal process and without consent.

The jurisprudential framework of indigenous peoples' rights has been most powerfully developed at the regional level by the Inter-American Court of Human Rights, which in a series of landmark judgments including Saramaka People v. Suriname in 2007 and Sarayaku People v. Ecuador in 2012 established binding standards for state consultation with and consent of indigenous communities before projects affecting their territories are undertaken. These Inter-American standards have been cited by UN treaty bodies as reflecting the minimum requirements of the ICCPR and ICESCR as applied to indigenous communities. India, while not subject to the Inter-American jurisdiction, is subject to the underlying treaty obligations that the Inter-American Court has interpreted, and those obligations demand a fundamentally different relationship with Adivasi communities than the one the Indian state currently maintains.

CHAPTER SIX: INDIA AND ITS NEIGHBORS: THE REGIONAL ARCHITECTURE OF HEGEMONIC HARM

6.1 Theoretical Frameworks for Regional Hegemony and Human Rights

India's relationship with its neighbors, Bangladesh, Nepal, Sri Lanka, Myanmar, Bhutan, and Maldives, is characterized by a persistent imbalance of power that has both geopolitical and human rights dimensions. The theoretical frameworks for analyzing regional hegemony in the human rights context draw on several intellectual traditions.

Thucydides' observation in the Melian Dialogue, "the strong do what they can and the weak suffer what they must," captures the realist dimension of India's regional posture but inadequately accounts for the normative framework that international law attempts to impose on this power relationship. The liberal institutionalist tradition, represented by scholars like Robert Keohane in "After Hegemony" published in 1984, argues that even powerful states have incentives to operate within multilateral frameworks and to exercise restraint in their use of power, because the stability and legitimacy that rule-following creates is in their long-term interest. India's behavior in its region, characterized by regular violations of the rules it publicly endorses, suggests that the short-term gains of coercive power have consistently outweighed the long-term benefits of rule-following in the calculations of Indian foreign policy.

The postcolonial theory of sub-imperial power, developed by scholars like Vijay Prashad in "The Darker Nations" published in 2007 and by Radhika Desai in various works on Indian geopolitics, argues that India's regional behavior replicates, in miniature, the logic of the imperial power it replaced. Just as British colonialism extracted resources and maintained order in South Asia through a combination of military force, economic dependency, and cultural condescension, India's regional hegemony involves the extraction of economic advantage through asymmetric trade relationships, the maintenance of political order through support for client regimes, and a cultural condescension toward smaller neighbors that pervades both official rhetoric and popular media.

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The human rights dimensions of India's regional hegemony are multiple. They include the direct human rights violations at India's borders (the BSF's killings at the Bangladesh border, the blocking of trade during border disputes with Nepal, the manipulation of water resources shared with Bangladesh and Pakistan). They include the indirect human rights violations enabled by India's support for client regimes that themselves commit violations (the Rajapaksa government in Sri Lanka during the last stages of the civil war, when India's political calculations contributed to impunity for mass atrocities against Tamil civilians). And they include the structural violations created by India's use of economic leverage to extract concessions from smaller neighbors in ways that compromise those neighbors' democratic sovereignty.

6.2 India and Bangladesh: Border Killings, Forced Expulsions, and Water Politics

The India-Bangladesh relationship is perhaps the most complex and revealing of India's regional relationships, combining a shared history of the 1971 liberation war, in which India played a crucial role in Bangladesh's independence from Pakistan, with a contemporary relationship characterized by systematic mistreatment of Bangladeshi nationals at the border and by India's use of water resources as a tool of political leverage.

The Indian Border Security Force's killings at the India-Bangladesh border represent one of the most egregious and under-reported patterns of state violence in the world. The HRW World Report 2026 documents that BSF forces allegedly killed at least 10 Bangladeshis at the India-Bangladesh border in the first four months of 2025 alone. The Global Torture Index 2025 notes that residents of West Bengal, especially near the Indo-Bangladesh border, face routine violence, torture, and extrajudicial killings by state forces, and that legal impunity granted to the BSF severely hinders accountability and justice for victims. Odhikar, the Bangladeshi human rights organization, has documented that BSF forces have killed over 1,000 Bangladeshi nationals at the border in the period from 2000 to 2024, making the India-Bangladesh border one of the deadliest land borders in the world outside of active conflict zones.

The legal framework governing the use of force at borders is established in international human rights law and customary international law. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990, establish that law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury. The killing of Bangladeshi civilians crossing an agricultural border without any weapons or apparent threat of violence cannot be justified under these principles.

India's response to the Pahalgam attack included the forced expulsion of nearly 1,900 Muslims and Rohingya refugees to Bangladesh and Myanmar. The OHCHR report characterized these expulsions as violating the principle of non-refoulement. The specific technique documented in the Amnesty International report for 2025 of forty Rohingya being blindfolded, flown to the Andaman and Nicobar Islands, and then pushed into the sea and made to swim to an island in Myanmar, is an act of such extraordinary cruelty and illegality that it demands the strongest possible condemnation and the most serious international legal response. This is not border

enforcement; it is the deliberate endangerment of people's lives in violation of every applicable standard of international law and basic humanity.

The water politics dimension of the India-Bangladesh relationship centers primarily on the Teesta River, which originates in Sikkim in India and flows through West Bengal before entering Bangladesh. Bangladesh has been seeking a water-sharing agreement on the Teesta for decades: the river supports the livelihoods of millions of Bangladeshi farmers in the country's northern regions, and upstream diversions by India have significantly reduced the river's flow during the dry season when Bangladesh's agricultural need is greatest. A draft Teesta water-sharing agreement was reportedly finalized in 2011 but was blocked by the West Bengal state government under Chief Minister Mamata Banerjee, and has remained unresolved since.

India's control over the headwaters of Bangladesh's most important rivers gives it enormous leverage over Bangladesh's agricultural and economic security. The use of this leverage, not as outright coercion, which would be too visible, but as a constant background condition of Bangladesh's negotiating position on issues ranging from trade to border management to political matters, is a form of structural hegemony that compromises Bangladesh's effective sovereignty without any single identifiable act of violation. This is structural violence in Galtung's sense: built into the relationship between the two countries in a way that systematically disadvantages the weaker party without requiring any specific decision by the stronger party to harm.

6.3 India and Nepal: The Constitutional Crisis and the Blockade Legacy

Nepal's relationship with India has been profoundly shaped by the 2015 episode in which India imposed what amounted to an economic blockade on Nepal following Nepal's adoption of a new constitution that India regarded as insufficiently accommodating of the Madhesi community of Nepal's southern Terai region. The blockade lasted approximately five months and, occurring immediately after the devastating earthquake of April 2015 that killed nearly 9,000 people, constituted a humanitarian catastrophe in addition to a political crisis. The Nepalese government described the blockade as an act of "economic coercion"; India maintained that it was not imposing a blockade but merely responding to the concerns of Madhesi communities who were themselves blocking fuel trucks at the border.

The distinction India sought to draw between a state-imposed blockade and voluntary community protest was rejected by independent observers, who documented extensive evidence that Indian security forces facilitated and in some cases participated in the blockade of fuel and goods at the border. The episode generated enormous anti-India sentiment in Nepal, which had historically maintained close cultural and political ties with India, and contributed to a political realignment in which Nepal significantly strengthened its relationship with China as a counterbalance to Indian influence.

The 2020 border dispute, in which India published an official map claiming territory in Nepal, including the strategically important Lipulekh Pass area, further inflamed bilateral relations. Nepal's Parliament unanimously approved a constitutional amendment updating Nepal's official map to include the disputed territories, setting the stage for a territorial standoff that has not been fully resolved as of 2026. The dispute is significant not only as a bilateral territorial disagreement

but as an illustration of India's willingness to use its geopolitical dominance to assert territorial claims against a much weaker neighbor in ways that would be unthinkable if the power differential were reversed.

The jurisprudential framework for territorial disputes between sovereign states is provided primarily by the International Court of Justice, which has jurisdiction to adjudicate boundary disputes between states that accept its jurisdiction. Nepal and India are both UN member states subject to the ICJ's general framework of international law, but neither has accepted the ICJ's compulsory jurisdiction, meaning that the dispute can only be brought to the Court by mutual agreement. India's size and regional dominance make it unlikely to agree to international arbitration of a dispute it believes it can resolve on its own terms through the exercise of bilateral power.

6.4 India and Myanmar: The Insurgency Buffer and Rohingya Complicity

India's relationship with Myanmar is a case study in the trade-off between geopolitical interest and human rights principle. The military coup in Myanmar in February 2021, which overthrew the elected government of Aung San Suu Kyi and reinstated military rule, created an immediate humanitarian crisis that has intensified with each subsequent year. Hundreds of thousands of Myanmar civilians, including ethnic Chin, Kachin, Karen, Karenni, and Bamar people, have fled across borders to escape military violence. A significant number have sought refuge in India, particularly in the northeastern states of Mizoram and Manipur that share long and porous borders with Myanmar.

India's response to the Myanmar crisis has been determined primarily by its security interests and its relationship with Myanmar's military, which India regards as an important partner in containing insurgencies in its northeastern states. India has not recognized the refugee status of Myanmar nationals fleeing to its territory, has not acceded to the 1951 Refugee Convention or its 1967 Protocol, and has in several cases forcibly returned Myanmar refugees to Myanmar despite the risk of persecution they face there. In September 2025, India repealed four earlier laws and adopted new legislation classifying asylum seekers as "illegal migrants," a legislative change that Amnesty International characterized as fundamentally incompatible with India's international human rights obligations.

India's treatment of the Rohingya, the Muslim minority from Myanmar's Rakhine State who have been subjected to what the UN Fact-Finding Mission on Myanmar characterized in 2018 as atrocities amounting to genocide, is particularly troubling. India has consistently resisted international pressure to provide protection to Rohingya refugees on its territory, and has periodically engaged in forced deportations of Rohingya to Myanmar. The 2025 episode in which Rohingya were blindfolded and pushed into the sea off the Andaman Islands represents the nadir of this policy, an act of cruelty that stands in sharp contrast to India's self-presentation as a civilization based on the values of ahimsa (non-violence) and vasudhaiva kutumbakam (the world is one family).

The legal framework governing India's obligations toward Rohingya and other asylum seekers is complex precisely because India has not acceded to the Refugee Convention. However, the

principle of non-refoulement has been recognized by international legal authorities, including the Human Rights Committee and the Committee Against Torture, as a customary international law norm that binds all states regardless of treaty membership. The Global Torture Index 2025 explicitly notes that the BSF's operations at the India-Bangladesh border regularly result in extrajudicial killings and that legal impunity severely hinders accountability. India's forced expulsions of Rohingya to Myanmar, where they face documented persecution and violence, are straightforward violations of the non-refoulement principle.

6.5 India and Sri Lanka: The Tamil Question and the Principle of Non-Interference

India's relationship with Sri Lanka during the final phase of the civil war between the Sri Lankan government and the Liberation Tigers of Tamil Eelam, which ended in May 2009 with the military defeat of the LTTE, raises profound questions about India's role in enabling human rights violations by a regional client state. The final months of the war, in particular, witnessed what the UN Panel of Experts on Sri Lanka described in 2011 as "a grave assault on the entire regime of international law" including the shelling of civilian hospitals, the deliberate targeting of humanitarian operations, the summary execution of prisoners, and the systematic sexual violence against women Tamil civilians in military-controlled areas.

India's position during this period was one of calculated ambivalence. On one hand, India officially called for the protection of civilian lives and for a ceasefire to allow humanitarian access. On the other hand, India continued to provide intelligence and logistical support to the Sri Lankan government, and used its diplomatic influence to block international efforts to impose a ceasefire or to establish an international accountability mechanism. India voted against calls for international investigation in Sri Lanka at the UN Human Rights Council and used its influence with other states to build opposition to accountability measures.

The theoretical framework for analyzing India's complicity in the Sri Lankan mass atrocities draws on the concept of "complicit bystander" developed in international criminal law and on the doctrine of state responsibility as codified in the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts. Article 16 of the ILC Articles establishes that a state that knowingly aids or assists another state in the commission of an internationally wrongful act is itself responsible for that act, to the extent that its assistance contributed to the commission of the wrongful act. India's provision of intelligence and diplomatic protection to the Sri Lankan government during a period when that government was committing what independent experts characterized as probable war crimes may engage its responsibility under this framework.

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CHAPTER SEVEN: IS INDIA A DEMOCRACY: THE THEORETICAL QUESTION AND ITS CONSEQUENCES FOR INTERNATIONAL HUMAN RIGHTS LAW

7.1 Defining Democracy: Minimalist, Maximalist, and Deliberative Conceptions

The question of whether India is a democracy, which may seem provocative or even absurd to many readers given India's continued formal commitment to regular elections and multiparty competition, is in fact a serious theoretical question with profound practical consequences for international human rights law and for the obligations of the international community. The answer depends critically on which conception of democracy one adopts.

The minimalist conception of democracy, associated with Joseph Schumpeter's 1942 work "Capitalism, Socialism and Democracy," defines democracy simply as a political method: a procedure for reaching political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's votes. On this minimalist definition, India remains a democracy as long as elections are held and the governing party can, in principle, be voted out of office. The 2024 Indian general election, which saw the BJP-led National Democratic Alliance returned to power but with a significantly reduced parliamentary majority, is often cited as evidence that the minimalist definition is satisfied: the electoral process worked well enough to reduce the governing coalition's seats.

But the minimalist definition is inadequate as a basis for either normative assessment or practical policy, for reasons that have been extensively debated in democratic theory since Schumpeter. As Robert Dahl argued in "Polyarchy" published in 1971, genuinely democratic governance requires not merely free and fair elections but a broader set of conditions: the freedom to form and join organizations, the freedom of expression, the right to vote, the right to compete for public office, alternative sources of information, free and fair elections, and institutions for making government policies depend on votes and other expressions of preference. The systematic violation of the freedom of expression through the suppression of critical media, of the freedom to form and join organizations through the FCRA, and of access to alternative sources of information through internet shutdowns, means that India fails Dahl's "polyarchy" standards even if it meets the bare Schumpeterian minimum.

The maximalist or deliberative conception of democracy, associated with Habermas and with theorists like Seyla Benhabib in "Democracy and Difference" published in 1996, requires not merely that electoral procedures be followed but that the political process be genuinely inclusive, that all affected parties have a meaningful opportunity to participate in deliberation about collective decisions, and that the outcome of deliberation be constrained by principles of justice and rights. On this conception, a democracy that systematically excludes one-seventh of its population, the Muslim community, from effective political participation through a combination of legal discrimination, social violence, and political marginalization, is not a genuine democracy regardless of the formal electoral process.

The concept most useful for the current Indian situation is what scholars of comparative politics, following Steven Levitsky and Daniel Ziblatt in "How Democracies Die" published in 2018, have called "democratic erosion" or "democratic backsliding." This concept identifies a process

of gradual, incremental, and often formally legal deterioration in the quality of democratic governance, in which elected leaders use their democratic mandate to undermine the very institutions and norms that make democracy sustainable. The hallmarks of democratic backsliding that Levitsky and Ziblatt identify, including the rejection of democratic rules of the game, the denial of the legitimacy of political opponents, the toleration or encouragement of violence, and the readiness to curtail the civil liberties of opponents, are all present in contemporary India.

7.2 Democratic Backsliding and the Failure of International Human Rights Accountability

The classification of India as a case of democratic backsliding rather than as a stable democracy or as an outright authoritarianism has specific consequences for international human rights law and for the international community's obligations. Under the framework of international human rights law, the character of a state's political system does not in itself determine its obligations; the treaty obligations of a state are binding regardless of whether the state is democratic or authoritarian, and the substantive standards of the ICCPR, the ICESCR, and other human rights treaties apply equally to all states parties.

However, in the practical operation of international human rights mechanisms, the democratic or authoritarian character of a state profoundly affects the mechanisms through which those obligations are enforced. Democratic states are assumed to have domestic accountability mechanisms that can address human rights violations internally, reducing the need for international intervention. Authoritarian states are assumed to lack such mechanisms and therefore to be more appropriate subjects of international accountability processes. The intermediate case of the backsliding democracy, which maintains the form of domestic accountability mechanisms while systematically hollowing them out, creates a dilemma for international human rights enforcement: the mechanisms exist on paper but do not function, yet the state can invoke their formal existence as evidence that international intervention is unnecessary.

This dilemma is precisely India's strategy in international human rights forums. India consistently invokes its democratic institutions, its independent judiciary, its free press, and its active civil society as evidence that international human rights criticism is unnecessary and inappropriate. But the documented reality is that the judiciary is compromised by executive pressure, the press is systematically suppressed, and civil society is defunded and harassed through the FCRA and other mechanisms. The gap between the formal existence of these institutions and their effective functioning as accountability mechanisms is the gap in which India's human rights violations thrive.

The obligation of the international community in this situation is theoretically clear, even if politically difficult to discharge. The UN Human Rights Council's mandate includes the promotion and protection of human rights globally, including in the context of democratic backsliding. The Universal Periodic Review mechanism, through which all UN member states are reviewed on their human rights situation every four and a half years, provides a formal opportunity for the international community to engage with India's human rights situation in a systematic way. The recommendations made to India in its most recent Universal Periodic

Review, many of which India has declined to accept, track the analysis developed throughout this textbook.

But the UPR process has significant limitations as an accountability mechanism. It is a peer review process, not an adjudicatory one: the recommendations are not binding, there is no enforcement mechanism beyond diplomatic pressure, and states that are geopolitically powerful or economically important have significant capacity to manage the review process through diplomatic maneuvering. India's October 2025 election to the UN Human Rights Council for the 2026-2028 term, occurring simultaneously with the documentation by the OHCHR of serious human rights violations following the Pahalgam attack, illustrates the gap between the international community's formal human rights commitments and its actual practice.

7.3 The Demand for UN Structural Reform and India's Position

The inadequacy of existing international human rights mechanisms in holding India accountable raises the broader question of what structural reforms to the international human rights system are necessary to address situations of democratic backsliding by major powers. Several proposals have been developed in the scholarship of international human rights law that deserve serious consideration.

The first proposal, associated with scholars like Philip Alston, the former UN Special Rapporteur on extreme poverty and human rights, is for the establishment of a permanent international court for human rights with universal jurisdiction, analogous to the International Criminal Court but with jurisdiction over state responsibility for human rights violations rather than individual criminal responsibility. Such a court, if established, would provide a forum in which complaints against India could be adjudicated through a judicial process with proper evidentiary standards, legal representation for all parties, and binding judgments. India's current immunity from judicial accountability at the international level, a consequence of its non-acceptance of the Optional Protocol to the ICCPR and its non-membership in any regional human rights court, would be eliminated.

The second proposal, which has been advocated by the UN High Commissioner for Human Rights in various forms, is for the strengthening of the Universal Periodic Review mechanism through the introduction of follow-up procedures that monitor state compliance with UPR recommendations over time and that trigger escalating consequences for states that consistently fail to implement accepted recommendations. Currently, the UPR produces recommendations that states may accept or reject at their discretion, with no mechanism to compel implementation or to impose consequences for non-compliance.

The third proposal, which has significant support in the global civil society community, is for the reform of the UN Human Rights Council's membership criteria to exclude states that are themselves documented to be major human rights violators. The current membership of the Human Rights Council includes states that have been documented to commit systematic human rights violations, which undermines the Council's credibility and effectiveness as an enforcement mechanism. India's election to the Council for 2026-2028, occurring in the context of documented systematic violations, is an example of this structural problem.

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7.4 India's Response to International Criticism: The Sovereignty Defence and Its Inadequacy

India's standard response to international human rights criticism is to invoke the principle of state sovereignty and to characterize the criticism as interference in India's internal affairs. This response has deep roots in the historical experience of colonialism: India's freedom movement was, among other things, a struggle against the pretension of European powers to define and enforce standards of "civilization" upon the colonized world, and Indian foreign policy has been shaped by a deep wariness of any principle that might justify external interference in the internal affairs of sovereign states.

The sovereignty defense is theoretically sophisticated in some formulations. The postcolonial critique of international human rights law, articulated by scholars including B.S. Chimni in "Third World Approaches to International Law" and by Makau Mutua in "Human Rights: A Political and Cultural Critique" published in 2002, questions whether the current international human rights framework adequately reflects the perspectives and experiences of non-Western societies, whether it conceals a new form of cultural imperialism beneath the universal language of rights, and whether its application is genuinely universal or selectively targeted at states that are geopolitically convenient subjects of Western criticism.

These critiques have genuine force and must be taken seriously. The international human rights system does have a history of selective application; Western states do deploy human rights criticism instrumentally in the service of geopolitical interests; and the cultural assumptions embedded in mainstream rights theory do reflect particular historical experiences that are not universal. Acknowledging these truths is essential to intellectual honesty.

However, the sovereignty defense, even in its most sophisticated postcolonial formulation, fails as a response to documented human rights violations for reasons that are equally fundamental. The principle of non-interference in the internal affairs of states was articulated in an era when "internal affairs" meant matters that genuinely concerned only the state and its own people. The international community's recognition, after the Holocaust, that atrocities committed by a state against its own population are matters of international concern, not merely "internal affairs," is one of the foundational achievements of post-World War II international law. The Responsibility to Protect doctrine, unanimously endorsed by the UN General Assembly in 2005, explicitly establishes that the international community has a responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity when their own governments fail to do so.

The application of the sovereignty defense to suppress criticism of documented violations also involves a logical inconsistency that must be identified. The sovereignty argument claims that India's domestic affairs are not the business of the international community. But sovereignty in international law is not an absolute and unconditional attribute; it is a relational concept whose content is defined by the international legal framework that simultaneously establishes and limits the rights of states. A state that claims sovereignty while refusing to comply with the international obligations that define the scope and limits of sovereignty is claiming a pre-legal, pre-international sovereignty that has no basis in modern international law.

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CHAPTER EIGHT: THE POLITICS OF REFORM: WHY CHANGE HAS FAILED AND WHAT GENUINE REFORM WOULD REQUIRE

8.1 The Structural Obstacles to Rights Reform in India

The question of why India's human rights situation has not been more effectively addressed by domestic reform efforts, despite the existence of sophisticated civil society organizations, activist courts, committed human rights defenders, and a constitutional framework that formally mandates rights protection, is one of the most important and most difficult questions in the study of Indian governance. The answer requires examining the structural obstacles to reform at multiple levels.

At the political level, the most fundamental obstacle is the alignment of the ruling party's core constituency with the continuation of the patterns of rights violation. The BJP's electoral coalition, built primarily around upper-caste Hindu men in northern and western India, has interests that are in many respects directly opposed to the rights of Dalits, Muslims, Adivasis, and women. Land reform, which would require redistribution from upper-caste landowners to landless Dalits and Adivasis, threatens core constituency interests. Effective enforcement of anti-discrimination law would require the police and bureaucracy to act against the social communities from which their officers predominantly come. The protection of Muslim property rights would conflict with the political goal of building Hindu nationalist identity through the narrative of Muslim threat and Hindu victimhood.

The structural obstacle at the institutional level is the penetration of the state apparatus by the values and social networks of the dominant castes and the BJP's ideological movement. The Indian Administrative Service, the Indian Police Service, and the higher judiciary are all heavily dominated by upper-caste Hindus, particularly Brahmins, despite the formal affirmative action provisions of the Constitution. This social composition creates an institutional culture in which the claims and perspectives of subordinated groups are systematically discounted, and in which the enforcement of rights that would benefit those groups is treated as a low priority.

The structural obstacle at the economic level is the relationship between India's neoliberal growth model and the rights of the most marginalized communities. The displacement of Adivasi communities from forest and mineral-rich lands in the name of industrial development is not an accidental feature of India's economic model; it is the model's central mechanism for securing the resource base that drives industrial growth. Similarly, the suppression of labor rights, the deployment of preventive detention to discipline workers in special economic zones, and the use of caste hierarchy to maintain a cheap labor supply are economically functional features of India's development model rather than aberrations to be eliminated.

At the ideological level, the obstacle is the Hindu nationalist hegemony in public discourse that treats any critique of India's human rights situation as anti-national, any acknowledgment of minority community suffering as Muslim appeasement, and any international criticism as colonial condescension. This ideological framework makes it politically costly, in the current

environment, to advocate effectively for human rights reforms that would benefit minorities, Dalits, and other marginalized groups. The shrinking of political space for rights advocacy is itself a human rights violation, since it operates through the suppression of free expression and the defunding of civil society, but it also creates the conditions for the perpetuation of all other violations.

8.2 What Genuine Reform Would Require: A Jurisprudential Analysis

Genuine reform of India's human rights situation would require simultaneous action on multiple fronts: legislative, institutional, judicial, political, and international. The following analysis sketches the minimum requirements of reform at each level, drawing on the jurisprudential frameworks developed throughout this textbook.

At the legislative level, the most urgent reform requirements include: the repeal of the Armed Forces Special Powers Act and its replacement with legislation that provides adequate legal powers to security forces while maintaining judicial oversight and criminal accountability; the reform of the Unlawful Activities Prevention Act to eliminate the near-impossible bail standard, the designation of individuals as "terrorists" without judicial determination, and the vague and overbroad definitions of terrorism that make peaceful political activity and journalism susceptible to criminal prosecution; the reform of the Foreign Contribution Regulation Act to eliminate its discriminatory application against human rights civil society while maintaining appropriate safeguards against foreign interference in electoral processes; the repeal or comprehensive reform of anti-conversion legislation in all BJP-governed states; and the reversal of the Waqf Amendment Act or its amendment to eliminate its discriminatory features.

At the institutional level, the reform requirements include: a fundamental transformation of the police institution, beginning with the implementation of the seven binding directives issued by the Supreme Court in Prakash Singh v. Union of India in 2006 for police reform, which after nearly two decades remain substantially unimplemented; the establishment of genuinely independent institutional mechanisms for investigating and prosecuting custodial torture and extrajudicial killings by security forces, including the BSF; the reform of the National Human Rights Commission to restore its "A" status through the introduction of genuine independence from government, transparent appointments, and robust enforcement mechanisms; and the transformation of the prison system to address the documented overcrowding, caste-based discrimination, and denial of basic rights documented in multiple inspection reports.

At the judicial level, the reform requirements include: a constitutional amendment to establish a transparent, merit-based, and politically accountable system for judicial appointments that replaces both the opaque collegium system and the rejected government-controlled NJAC; the reform of bail law to implement the Supreme Court's own pronouncements about bail as the rule and jail as the exception, particularly in counterterrorism cases; and the development of judicial mechanisms to enforce compliance with Supreme Court judgments by state governments, particularly in cases involving the rights of marginalized communities.

At the political level, the most fundamental requirement is the restoration of the competitive, pluralistic political environment in which different visions of India's future, including visions

that are based on constitutional morality rather than Hindu nationalist popular morality, can compete for political support through genuinely free and fair elections. This requires the reform of electoral rolls processes, the restoration of press freedom, the depoliticization of investigative agencies, and the repeal of laws that discriminate against political participation by minority communities.

At the international level, India's reform trajectory requires sustained, principled, and consistent engagement from the international community, refusing to subordinate human rights concerns to geopolitical and economic interests. The EU's 2025 "New Strategic EU-India Agenda," which deliberately overlooked India's deepening human rights crisis in favor of strategic partnership, is a model of what must not happen. Effective international engagement would include: conditioning trade agreements and strategic partnerships on verifiable improvements in human rights; supporting UN Special Procedure requests to visit India, which have been pending for decades; providing sustained support to Indian civil society organizations whose independence is threatened by FCRA restrictions; and using diplomatic channels to advocate for the release of political prisoners held under the UAPA.

8.3 The Question of Political Will: Ambedkar's Final Warning

The analysis in this chapter, and indeed throughout this textbook, has consistently documented not the absence of legal frameworks adequate to protect human rights but the absence of political will to implement them. The Indian Constitution contains, in Ambedkar's phrase, the heart and soul of a rights-protecting democratic order. The problem is not the text; it is the practice. And the gap between text and practice persists not because the gap is inevitable or because change is impossible but because the political forces that benefit from the gap are dominant and those that would benefit from closing it are systematically disempowered.

This brings us back to Ambedkar's final warning in his November 25, 1949 address to the Constituent Assembly, the warning that political democracy cannot survive without social democracy. By "social democracy" Ambedkar meant not merely formal equality before the law but genuine equality of social conditions: the elimination of the hierarchies of caste, wealth, and gender that ensure that formal legal equality translates into radically unequal life chances. His warning was that India's political democracy, built on the foundation of a profoundly unequal social order, would be vulnerable to capture by those who controlled the levers of social and economic power, and would ultimately serve their interests rather than the interests of the many.

That warning has been vindicated with painful completeness in the India of 2025 and 2026. The political democracy that Ambedkar helped build is being systematically dismantled, not by a military coup or a formal declaration of dictatorship, but by the patient, incremental, and formally legal work of a political movement that has mastered the art of using democratic institutions and procedures to undermine democratic substance. The dismantling is happening in the name of the majority, of cultural tradition, of national security, and of development: all of the arguments, in other words, that Ambedkar's constitution was designed to resist.

The resistance requires not merely legal challenge but the kind of sustained political mobilization that can only come from the communities most directly affected by the violations: Dalits,

Muslims, Adivasis, women, LGBTQ+ people, the rural poor, and the democratic middle class that is beginning to understand that the authoritarianism being built against minorities will eventually reach it too. The legal frameworks, the international accountability mechanisms, and the scholarly analysis are all necessary but insufficient conditions for change. The sufficient condition is the political mobilization of those who have the most to gain from a genuinely rights-respecting India.

CHAPTER NINE: PHILOSOPHICAL SYNTHESIS: DIGNITY, POWER, AND THE POSSIBILITY OF JUSTICE IN A BROKEN SYSTEM

9.1 Hannah Arendt's "Right to Have Rights" and Its Application to India

Hannah Arendt's concept of the "right to have rights," developed in "The Origins of Totalitarianism" published in 1951, is among the most profound contributions to human rights philosophy and among the most directly applicable to the analysis of India's rights situation. Arendt was writing in the aftermath of the catastrophic experience of statelessness, of refugees and displaced persons who had lost their national citizenship and with it their access to any legal framework that recognized them as bearers of rights. Her central insight was that the abstract concept of universal human rights was empty without membership in a political community that recognized those rights and provided the institutional apparatus for their enforcement.

Arendt's "right to have rights" is the right to belong to a political community, to be recognized as a member of a community that takes your claims of right seriously. It is not a right that can be derived from abstract natural law or from the universal human condition; it is a political right that depends on the existence of political institutions capable of honoring it. When Arendt wrote that "the calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, but that they no longer belong to any community whatsoever," she was identifying the fundamental failure of the international system to provide all persons with the political membership that makes rights effective.

The application of Arendt's framework to India's Dalit community, to its Muslim minority, to its Kashmiri population, and to the Rohingya refugees expelled from its territory is both illuminating and alarming. In a formal sense, these populations are all members of the Indian political community, with constitutional rights, the right to vote, and access to courts. But in a substantive sense, their membership in the community is conditional, contested, and incomplete. The Dalit who cannot approach a police station without risk of humiliation or violence, the Muslim family whose home has been demolished by a state government as collective punishment, the Kashmiri journalist imprisoned without charge under the PSA, the Rohingya refugee pushed into the sea by BSF personnel: these people experience, in different degrees and forms, the condition of rightlessness that Arendt described. The formal existence of their rights has been separated from the institutional reality of their enforcement, and in that gap they live.

The connection between Arendt's analysis and the contemporary theory of "legal exclusion" developed by scholars including Roberto Unger in "Law in Modern Society" published in 1976

and by contemporary critical legal theorists is important. Unger argued that the formal equality of liberal law conceals a substantive inequality that operates through the selective enforcement of rights in favor of those with social, economic, and political power. The Indian case is a particularly comprehensive illustration of this mechanism: the formal rights framework is extraordinarily generous, but the enforcement framework is structured in ways that systematically advantage those who already have power. The result is what might be called "performative constitutionalism": a legal system that performs the vocabulary of rights and democracy while denying their substance to those who most need them.

9.2 Amartya Sen's Capabilities Approach and Structural Deprivation

Amartya Sen's capabilities approach, developed in collaboration with Martha Nussbaum and presented most comprehensively in "Development as Freedom" published in 1999, offers another philosophical framework that is powerfully relevant to India's rights situation. Sen argues that human development and human rights are best understood not in terms of formal liberties or material resources alone but in terms of the substantive freedoms that people actually enjoy: their real opportunities to lead lives that they have reason to value.

The capabilities approach requires asking not merely whether a person has the legal right to vote, to own property, to access education, or to receive healthcare, but whether they actually have the capability to exercise these rights, given their social position, their economic situation, their physical security, and the availability of the relevant institutions and services. A Dalit woman in rural Rajasthan may have the formal right to vote in free elections, to send her children to a government school, to access public health facilities, and to file a complaint with the police. But if her experience is that polling stations are in areas controlled by upper-caste landlords who tell their laborers how to vote, that the government school has no functioning teachers, that the public health facility has no medicines and treats her with contempt, and that the police refuse to register her complaint, then her formal rights are substantively empty.

Sen's capabilities approach has been criticized from several directions. From the right, it has been criticized for imposing a particular conception of the good life on people who may have different conceptions. From the left, it has been criticized for focusing on individual capabilities rather than on the structural transformation of social relations that would be necessary to genuinely address inequality. Nussbaum's version of the approach, which specifies a list of central capabilities that every person is entitled to reach a threshold level of, has been criticized for its universalism and for the risk of cultural imperialism in applying Western-derived standards to non-Western societies.

These critiques are serious and must be engaged with honestly. But in the Indian context, the capabilities approach remains an important corrective to the formalist tendency that has characterized much of Indian constitutional jurisprudence. The Supreme Court's expansive reading of Article 21 to include social and economic rights is, in many respects, an implicit adoption of the capabilities approach: the recognition that the right to life is substantively empty without the capabilities necessary to make life worth living. The problem is that the judicial recognition of these capabilities-based rights has not been followed by the institutional

transformation necessary to make them real for the most marginalized members of Indian society.

9.3 The Ethics of Care and India's Approach to Vulnerability

Martha Fineman's vulnerability theory, introduced earlier in this textbook, reaches its fullest application in the analysis of India's treatment of its most vulnerable populations in 2024 and 2025. Fineman argues that vulnerability is a universal and permanent feature of human embodied existence, and that the just state is one that responds to this vulnerability by building and distributing resilience: the access to resources, relationships, and institutional support that allow people to respond effectively to the inevitable harms they will encounter.

The Indian state, assessed by Fineman's criterion, has systematically failed its most vulnerable populations and has in many cases actively increased their vulnerability through the exercise of state power. The UAPA detainee who spends three years in pre-trial imprisonment has not merely been denied the presumption of innocence; she has had her life's accumulation of social, economic, and relational resilience resources destroyed by the imprisonment. The Adivasi family evicted from its ancestral forest land to make way for a mining project has not merely suffered an economic loss; it has been stripped of the ecological and cultural resilience that comes from living in a landscape shaped by generations of accumulated knowledge and relationship. The Rohingya man pushed into the sea off the Andaman Islands has had even the minimal resilience of physical survival threatened by an act of state violence.

The contrast between India's treatment of its most vulnerable internal populations and its self-presentation as a civilization of universal concern is one of the most jarring features of its public discourse. Prime Minister Modi regularly invokes the concept of "vasudhaiva kutumbakam" in international forums, claiming that India's civilizational heritage makes it uniquely suited to lead a multipolar world based on shared human values. But vasudhaiva kutumbakam cannot coexist with the BSF's border killings, the UAPA's arbitrary imprisonments, the bulldozer demolitions, and the forced expulsion of Rohingya into the sea. The ethics of care that the slogan invokes demands not merely declaratory commitment but institutional embodiment: a state apparatus organized around the care and support of the most vulnerable rather than around the extraction of resources from them.

9.4 Closing Synthesis: The Urgency of Accountability

The analysis across these nine chapters of Part Fourteen converges on a set of conclusions that are simultaneously analytically clear and morally urgent.

India is a state in which the formal architecture of rights-respecting democratic governance has been progressively hollowed out by a political movement that has internalized the Schmittian logic of friend and enemy, that treats the exercise of power over subordinated groups as the natural expression of cultural and religious identity rather than as a problem to be constrained by law, and that has developed an extraordinary sophistication in the use of formal legal mechanisms to accomplish substantively illegal ends.

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The hollowing out is visible in every institution of governance: in a Supreme Court that has retreated from its counter-majoritarian function and is now described by international scholars as experiencing an "existential crisis"; in a National Human Rights Commission that has been recommended for downgrading to "B" status because it can no longer credibly claim to protect the rights it was established to defend; in investigative agencies that have been weaponized against political opponents; in electoral mechanisms whose integrity is sufficiently questioned that the Supreme Court has had to monitor them in real time; and in a legislature that has used its overwhelming majority to pass laws whose discriminatory purpose is barely concealed beneath formal neutrality.

The hollowing out is equally visible in India's international conduct: in its military operations that the United Nations has found to violate the UN Charter; in its suspension of an internationally recognized water-sharing treaty; in its forced expulsion of Rohingya refugees in flagrant violation of the non-refoulement principle; in its killing of Bangladeshi nationals at the border; in its manipulation of Nepal's territorial integrity; and in its consistent refusal to engage with UN human rights mechanisms including nineteen pending Special Procedure visit requests and sixty-day response obligations.

The urgency of accountability is not merely academic. The people who are suffering the consequences of India's human rights violations, the Dalit woman whose rape complaint is dismissed, the Kashmiri journalist imprisoned under the PSA, the Adivasi family evicted from its forest, the Rohingya man pushed into the sea, the Muslim student harassed for criticizing Operation Sindoor, do not have the luxury of academic patience. For them, the failure of accountability is not a scholarly puzzle; it is the lived reality of their subjugation.

Part Fifteen of this textbook, which follows, will address the question of what justice requires in response to these documented realities: what specific legal reforms must be demanded, what international interventions are both legally justified and practically necessary, what the role of civil society, academic scholarship, and international advocacy must be in building the political conditions for genuine accountability, and what the relationship between short-term tactical demands and the long-term project of building an India that is actually, and not merely formally, committed to the dignity of all its people.

The stakes of this project are not limited to India. In a world where the idea of rights-respecting democratic governance is under challenge from multiple directions simultaneously, the trajectory of the world's most populous state is not merely a matter of concern for its own citizens. It is a test of whether the international human rights framework, built in the aftermath of the twentieth century's most devastating crimes, has the institutional resilience and the political will to hold even a state of India's size, complexity, and geopolitical significance to its declared values. If it cannot, the implications for the global human rights project extend far beyond South Asia.

PART FIFTEEN: THE RECKONING, THE ARCHITECTURE OF ACCOUNTABILITY, AND THE THEORETICAL HORIZON OF JUSTICE

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"Justice is not simply a principle that we apply to the world. It is a demand that the world makes upon us, a demand that we cannot escape without destroying something essential in ourselves as moral and political beings." Adapted from Martha Nussbaum, Creating Capabilities, 2011.

PREFATORY NOTE TO PART FIFTEEN

This is the final part of a fifteen-part jurisprudential examination of human rights violations in India, conducted with the conviction that the truth of a legal and political system is found not in its formal declarations but in the lived experience of those it governs. The preceding fourteen parts have established the theoretical frameworks, traced the historical foundations, examined the constitutional architecture, analyzed the systematic violations of particular communities and particular rights, interrogated India's conduct as a regional hegemon, and evaluated the responses and failures of the international system. This final part undertakes the work that must follow all serious jurisprudential investigation: synthesis, reckoning, theoretical horizon-setting, and the construction of a framework for accountability and transformation.

The writing of this part is informed by the extraordinary density of evidence accumulated in 2024, 2025, and the early months of 2026. The Human Rights Watch World Report 2026, published in February of this year, documented the continuing and in many respects intensifying slide of the Indian state toward authoritarian governance, including illegal expulsions of Bengali-speaking Muslims to Bangladesh, the sustained misuse of counterterrorism law against peaceful dissenters, the use of the amended criminal code to prosecute journalists and social media users, and the systemic vilification of Muslim communities in the aftermath of the Pahalgam terrorist attack of April 2025. The Amnesty International annual report, published in April 2026, confirmed and deepened this picture, documenting the weaponization of criminal laws against artists, academics, and journalists, the ongoing shrinking of civic space in Jammu and Kashmir, and the National Human Rights Commission's recommended downgrading to "B" status by the global accreditation body due to concerns about its independence. The UN Office of the High Commissioner for Human Rights, in November 2025, expressed alarm about the mass detention of approximately 2,800 individuals, including journalists and human rights defenders, in the aftermath of the Pahalgam attack.

What these contemporaneous sources document is not a series of aberrations or isolated incidents but the systematic expression of a state project, the transformation of the Indian republic from a constitutionally secular, rights-respecting democracy into an ethnonationalist, majoritarian state governed by the logic of Hindutva. This project has been underway for over a decade. Its institutional expressions now reach into every domain of constitutional and legal life, the judiciary, the legislature, the executive, the police, the regulatory apparatus, the media environment, and the mechanisms of civil society oversight. The reckoning that this final part undertakes is therefore a reckoning with a system, not merely a government, with a project, not merely a set of policies.

The chapters of this part are organized as follows. Chapter One develops a comprehensive theoretical framework for understanding India's current situation, drawing on the convergent insights of critical legal studies, postcolonial jurisprudence, political philosophy, and the emerging theory of democratic backsliding. Chapter Two conducts a final audit of India's international legal obligations and its systematic failures to meet them, with specific attention to 2024, 2025, and 2026 developments. Chapter Three examines the theoretical and practical case for UN intervention and international accountability mechanisms, engaging with the most serious contemporary scholarly debates about the efficacy and legitimacy of international human rights enforcement. Chapter Four develops a comprehensive analysis of India's regional hegemonism and its relationship to human rights, examining the theoretical frameworks of asymmetric power relations and the rights of smaller states. Chapter Five turns to the question of constitutional transformation, examining what a genuine rights-respecting transformation of the Indian legal order would require, and engaging with the philosophical literature on constitutional change, transitional justice, and institutional design. Chapter Six provides the concluding theoretical synthesis of the entire fifteen-part project, situating India's human rights crisis within the broadest available frameworks of political philosophy, jurisprudence, and moral theory, and articulating the ultimate claim that this textbook has been building toward across its entire length.

CHAPTER ONE: THE THEORY OF DEMOCRATIC BACKSLIDING AND THE INDIAN CASE

1.1 Democratic Backsliding as a Jurisprudential Category

The concept of democratic backsliding has emerged in the past decade as one of the most important analytical categories in comparative politics and constitutional law. Unlike the classical theory of democratic breakdown, which focused on the dramatic collapse of democratic institutions through military coups or revolutionary seizures of power, democratic backsliding theory describes the more gradual, more insidious, and in many ways more difficult to address process through which democratic institutions are hollowed out from within by leaders who use democratic procedures to accumulate and entrench power while systematically dismantling the institutional checks that constrain that power.

The foundational texts in this theoretical tradition are Steven Levitsky and Lucan Way's work on "competitive authoritarianism," their 2010 book of that name, and their subsequent scholarship on the Trump era's implications for democratic theory; Nancy Bermeo's 2016 article "On Democratic Backsliding," which introduced the influential typology of democratic breakdowns; Tom Ginsburg and Aziz Huq's 2018 book "How Democracies Die," which applied the comparative theoretical framework to the American context; and Anna Grzymala-Busse's work on party systems and state capture. All of these works converge on a set of institutional warning signs that characterize democratic backsliding: the capture of constitutional courts, the erosion of press freedom, the weaponization of law enforcement against political opponents, the systematic harassment and defunding of civil society, the demonization of minority groups as threats to national identity and security, and the gradual concentration of power in the executive.

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By every one of these indicators, India under the Modi government represents a paradigm case of democratic backsliding. The Supreme Court's failure to adjudicate the challenges to the Citizenship Amendment Act for years, its deference to the executive in the Article 370 case, its restrictive interpretation of bail in UAPA cases, all of these represent a captured or cowed judiciary. The systematic cancellation of FCRA licenses for over 20,000 civil society organizations represents the defunding of civil society. The use of the UAPA, the former IPC sedition provision, the Prevention of Money Laundering Act, and now the new criminal codes against journalists, academics, and activists represents the weaponization of law enforcement. The Rashtriya Swayamsevak Sangh's ideology of Hindutva, which positions India's Muslim minority as a cultural and civilizational threat, represents the demonization of a minority group. And the concentration of decision-making in the Office of the Prime Minister, to a degree unprecedented in the post-Nehru era, represents the concentration of executive power.

The jurisprudential significance of this theoretical framing is profound. If India is experiencing democratic backsliding rather than ordinary governmental misconduct, then the appropriate response is not simply the enforcement of existing legal remedies but the recognition that the institutions through which those remedies would normally be sought are themselves compromised. A Kashmiri journalist who seeks judicial review of detention under the Public Safety Act must navigate a judicial system whose relationship to political power in security matters has been marked by consistent deference to the executive. An activist detained under the UAPA must secure bail from courts that have interpreted the UAPA's bail provisions in the most executive-friendly way possible. An NGO whose FCRA license has been cancelled must challenge that cancellation in courts that have upheld the constitutionality of the very amendments that made cancellation easier.

The specific jurisprudential framework that best captures this problem is what Ruti Teitel, in her influential work on transitional justice, calls the "lawfare" dynamic: the strategic use of legal instruments by those in power to pursue political objectives while simultaneously invoking the language of legality to shield those instruments from external criticism. The Indian government's consistent response to international human rights criticism is a sophisticated version of this strategy. When the UN Human Rights Committee raises concerns about UAPA misuse, the government responds that it is merely enforcing duly enacted legislation. When international civil society organizations document FCRA abuse, the government responds that it is merely regulating foreign funding as any sovereign state is entitled to do. When human rights organizations document the demolition of Muslim properties, the government responds that it is merely enforcing municipal regulations. The lawfare strategy makes the law itself the alibi for its violation.

Kim Lane Scheppele's concept of "autocratic legalism," developed in a series of articles beginning in 2018, is directly relevant here. Scheppele argues that contemporary autocrats distinguish themselves from their twentieth-century predecessors precisely by operating through legal forms rather than against them. Viktor Orban in Hungary, Vladimir Putin in Russia, and, Scheppele and others have argued, Narendra Modi in India, govern through an accumulation of legal changes, each individually presented as legitimate and specific, but collectively amounting to a transformation of the constitutional order that could never have been accomplished in a single dramatic move. The genius of autocratic legalism is that it makes democratic backsliding

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difficult to challenge within the legal system being used to accomplish it, because each individual legal change is formally valid even if the aggregate transformation is fundamentally illegitimate.

The Indian case adds a specific feature to the comparative literature that deserves theoretical attention: the deployment of cultural nationalism as both the ideological driver and the protective shield of backsliding. In Hungary, the Fidesz government invokes Christian civilization against Muslim immigration and Brussels bureaucracy. In Poland, the Law and Justice party invokes traditional Catholic values against liberal cosmopolitanism. In India, the BJP and the RSS invoke Hindu civilization, Bharat Mata, the idea of a civilizationally Hindu nation, against the perceived threats of Islam, Westernization, and what they call "urban Naxalism," the conflation of left-wing academics and human rights defenders with Maoist insurgency. This cultural nationalist framing performs several functions simultaneously: it mobilizes electoral support, it delegitimizes opposition, it creates a framework within which minority communities can be simultaneously branded as threats and subjected to violence that is presented as self-defense, and it provides a civilizational counter-narrative to the universalist human rights framework through which India's violations are most effectively criticized.

The theoretical implications for international human rights law are serious. If the cultural nationalist framework is accepted as a legitimate alternative to universal human rights standards, the entire edifice of international human rights law faces fragmentation. This is not a merely theoretical problem. The Indian government's explicit position, repeatedly stated by officials including the External Affairs Minister S. Jaishankar, is that Western human rights standards are culturally specific, that India has its own values and traditions, and that international human rights criticism of India represents a form of neo-colonial interference. This argument, while drawing on legitimate postcolonial critiques of the euro-centric biases in mainstream human rights discourse, is mobilized not to expand and deepen rights protection for India's most marginalized communities but to shield the state from accountability for their systematic oppression.

1.2 The Schmittian State of Exception and Its Indian Expression

The German legal and political theorist Carl Schmitt, whose work exercised enormous influence despite his collaboration with the National Socialist regime in Germany, developed the concept of the "state of exception" as a foundational category of political life. Schmitt's famous formulation, from his 1922 work "Political Theology," holds that "sovereign is he who decides on the exception." The sovereign is defined not by the ordinary exercise of legal power within a given constitutional framework but by the capacity to decide when the normal legal framework is suspended. It is in the exception that sovereignty reveals itself.

Giorgio Agamben extended Schmitt's analysis in a very different political direction in his work "State of Exception," published in Italian in 2003 and translated in 2005. Agamben argued that the state of exception, which was originally understood as a temporary, marginal measure deployed in genuine emergencies, has in the twentieth and twenty-first centuries become the dominant paradigm of governance. What was the exception has become the rule. The techniques of exception, including indefinite detention without trial, suspension of judicial oversight,

emergency legislative powers, and the exercise of lethal force without accountability, have been normalized and institutionalized to the point where they constitute the ordinary operating procedures of the modern state, not merely its emergency reserves.

The application of the Schmitt-Agamben framework to India is devastatingly apt. India has maintained a continuous state of exception in the northeast, specifically in Nagaland, Manipur, Assam, and Meghalaya, for over six decades. The Armed Forces Special Powers Act has been in operation in Nagaland, for instance, since 1958, almost continuously for over sixty years, a period so long that the state of exception has become the permanent constitutional condition of the northeast. In Jammu and Kashmir, the AFSPA has been in operation since 1990. The Public Safety Act has operated since 1978. The Disturbed Areas Act has been invoked continuously. Thousands of individuals have been detained without trial for periods that stretch years. The official record of the Association of Parents of Disappeared Persons documented over 8,000 enforced disappearances in Jammu and Kashmir between 1989 and the mid-2010s.

What Agamben's analysis illuminates that neither Schmitt's original formulation nor the mainstream human rights literature fully captures is the production of what Agamben calls "bare life," the stripping of the legal and political persona from the physical body, leaving the individual as a being who can be killed or disciplined without legal consequence. The Kashmiri detainee held indefinitely under the PSA without charge or trial exists in a legal void: she has not been found guilty of any offense, but she is also not being treated as innocent. She occupies a zone of legal indeterminacy in which the constitutional guarantees that should apply to her are effectively suspended. She is, in Agamben's terms, a figure of bare life, subject to sovereign power in its most unmediated form.

The Bhima Koregaon defendants, who were held for years in prison without trial under UAPA charges that international forensic experts demonstrated were based on fabricated evidence, represent another form of this production of bare life. Father Stan Swamy, eighty-three years old, suffering from Parkinson's disease, requesting a sipper cup to drink water because the disease prevented him from holding regular cups, denied bail, dying in custody without ever facing trial, was the most extreme expression of what happens when the state of exception is applied to individuals whose entire lives have been devoted to the advocacy of the rights of others.

The philosophical dimension of the bare life concept is its relationship to the distinction, drawn from ancient Greek political thought, between "zoe" (biological life) and "bios" (political life, life as a citizen with rights and participation). The production of bare life is the reduction of bios to zoe, the stripping of the political and legal person from the biological body. When the Indian state uses UAPA to detain activists without trial, when it uses the PSA to detain Kashmiri journalists, when it expels Bengali-speaking Muslims to Bangladesh without due process as documented in the HRW World Report 2026, it is producing bare life, reducing politically active, rights-bearing persons to bodies subject to sovereign power without legal protection.

The theoretical significance of this analysis is that it connects India's human rights crisis to the deepest level of political theory, the level at which the relationship between the state and the human body is constituted. It is not enough to say that India is violating specific articles of the ICCPR or that its government is behaving in ways inconsistent with its constitutional

commitments. The deeper truth is that the Indian state is engaged in a project of producing categories of persons whose political existence is denied, whose rights are suspended, and whose bodies are made available to sovereign power in ways that the constitutional framework is supposed to prevent but that the state of exception, normalized and institutionalized over decades, has made routine.

1.3 Postcolonial Theory and the Persistence of Colonial Governance

Frantz Fanon's analysis of colonial law in "The Wretched of the Earth," published in 1961, described the colonial city as divided into two zones: the settler's zone, characterized by solid structures, full stomachs, and the protections of law, and the native's zone, characterized by crowding, poverty, and the absence of those protections. The colonial condition, Fanon argued, is defined by this spatial and legal apartheid: the law operates differently in the two zones. In the settler's zone, it protects; in the native's zone, it polices.

Fanon was describing French colonial Algeria, but his analysis has a disturbing relevance to contemporary India. The "disturbed areas" designated under the AFSPA represent a spatial production of the colonial division. In those areas, the law operates in a fundamentally different register from the rest of the country. The constitutional protections of Part III of the Indian Constitution, the rights to life, liberty, and dignity that are supposed to apply universally, are effectively suspended in their operation through the operation of AFSPA and the parallel security legislation. The courts are accessible in theory but systematically denied access in practice by the combination of the PSA, the UAPA, the communications blackouts, and the intimidation of lawyers who attempt to represent detained persons.

Partha Chatterjee's analysis of the "political society" and "civil society" distinction in postcolonial India is also highly relevant. Chatterjee argues that the modern Indian state governs two distinct populations through two distinct logics. The first population, what Chatterjee calls "civil society," is composed of the propertied, educated, organized, and enfranchised segment of the population that operates within the framework of rights, contracts, and citizenship. This segment is governed through the normal procedures of law: courts, elections, property registration, contract enforcement, and so on. The second population, which Chatterjee calls "political society," is composed of the urban poor, the rural landless, the migrant laborer, the Adivasi forest dweller, the slum resident, who exist in the interstices of the legal order, technically citizens but in practice governed through welfare administration, police discretion, patronage, and negotiation rather than through rights enforcement.

This analysis illuminates the class dimension of India's human rights crisis. The violations this textbook has documented across its fifteen parts disproportionately affect those in the "political society" category: Dalits, Adivasis, Muslims, the rural poor, the urban informal labor force. These are the populations for whom the formal rights framework operates as promise rather than reality, as aspiration rather than protection. The upper-caste, propertied, educated professional, whatever her or his religion, can generally rely on the courts, can retain competent lawyers, can navigate bureaucratic systems, can access the formal economy. The Dalit manual scavenger, the Adivasi forest dweller, the Muslim small trader in a neighborhood targeted for demolition, cannot.

Upendra Baxi's distinction between "modern human rights" and "contemporary human rights" is the third postcolonial analytical framework that this section must engage. Modern human rights, in Baxi's framework, were articulated in the struggles of the colonized, the enslaved, the dispossessed, and the oppressed: they are rights born in resistance to domination. Contemporary human rights, by contrast, are the product of a bureaucratized, institutionalized international system that has largely been captured by the interests of dominant states and international financial institutions. The contemporary human rights system, Baxi argues, too often produces a trade-related, market-friendly version of rights that focuses on political liberties compatible with capitalist economic relations while systematically marginalizing economic and social rights and the rights of the most marginalized.

This critique has specific bite when applied to the international response to India's human rights violations. The United States and the European Union, the two actors in the international system that might be expected to exercise the most significant pressure on India regarding human rights, have systematically subordinated human rights concerns to strategic and economic interests. India is a large and growing economy, a significant arms market, a critical component of the Indo-Pacific strategic framework that both the United States and key European states have embraced as a counterbalance to Chinese power, and a major trading partner. The HRW World Report 2026 specifically noted that "despite the Modi administration's deteriorating human rights record, several countries strengthened security, economic, and trade ties with India." This is not a footnote in the analysis of India's human rights situation. It is one of the central explanatory factors for why systematic violations have been able to continue and intensify without effective international response.

1.4 The Theology of Hindutva: Ideological Analysis of the Rights-Denying Framework

The ideological framework of Hindutva, which drives the current Indian government's approach to governance, rights, and minority communities, requires careful jurisprudential and philosophical analysis. It is not merely a political ideology in the ordinary sense; it is a comprehensive civilizational project that has implications for every domain of law, governance, and social organization.

Hindutva, as an ideology, was systematically developed by Vinayak Damodar Savarkar in his 1923 pamphlet "Hindutva: Who is a Hindu?" Savarkar defined "Hindutva" not as adherence to the Hindu religion but as belonging to a civilizational category constituted by three factors: "pitribhumi" (fatherland), "punyabhumi" (holy land), and "rashtra" (nationhood). On this definition, Hindus, Sikhs, Jains, and Buddhists are "Hindus" in the Hindutva sense because their holy lands are within the subcontinent. But Muslims and Christians, whose holy lands are Mecca and Jerusalem respectively, cannot be fully "Hindu" in this sense and therefore cannot be fully Indian in Savarkar's political framework. The logical implication, drawn out by Savarkar and later theorized by M.S. Golwalkar in "We, or Our Nationhood Defined" (1939), is that Muslims and Christians in India are guests, or at best minorities who can remain on sufferance but must accept the cultural and civilizational supremacy of the Hindu majority.

The jurisprudential problem with Hindutva as a governing ideology is that it is fundamentally incompatible with the constitutional framework of the Indian republic. The Constitution is

explicitly secular: it prohibits discrimination on grounds of religion in Articles 14, 15, and 16, it protects religious freedom in Articles 25 through 28, and it was specifically framed as a rejection of the two-nation theory that had resulted in partition. The Preamble to the Constitution, as amended by the Forty-Second Amendment in 1976, explicitly describes India as a "secular" republic. The Supreme Court, in the famous Hindutva judgment of 1995 (Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte), notoriously held that "Hindutva" was a "way of life" rather than a religion and that appealing to Hindutva in election campaigns was not necessarily an appeal to religion forbidden by the Representation of the People Act. This judgment has been widely and justifiably criticized as ideologically motivated judicial reasoning that provided constitutional cover for what is in substance a sectarian political program.

The relationship between Hindutva ideology and the specific human rights violations documented in this textbook is direct and systematic. The ideology defines Muslims as cultural outsiders, which provides the ideological justification for the Citizenship Amendment Act, which for the first time makes religion a formal criterion of citizenship eligibility, excluding Muslims from the categories of persecuted minorities eligible for fast-track citizenship from neighboring countries. It defines Muslim property and habitation as appropriate targets for state-backed "development" action, which provides the ideological background for the systematic demolitions of Muslim homes and businesses documented by Human Rights Watch and Amnesty International. It defines Muslim political and civic activity as inherently threatening to the Hindu nation, which provides the context for the use of UAPA charges against organizations that document communal violence and advocate for Muslim communities. It defines criticism of Hindu nationalist politics as equivalent to criticism of India itself, which provides the framing for sedition and "anti-national" prosecutions of journalists, academics, and human rights defenders who challenge the government's narrative.

The feminist philosopher Uma Narayan, in her work "Dislocating Cultures: Identities, Traditions, and Third World Feminism," has analyzed how the invocation of "culture" and "tradition" in postcolonial societies operates to silence women's rights claims by framing them as Western imports incompatible with authentic cultural identity. The same logic operates in the Hindutva framework with respect to universal human rights standards. When international human rights critics raise concerns about the treatment of Muslims or Dalits in India, the Hindutva response is to frame those concerns as Western cultural imperialism, as the imposition of alien standards on a civilization that has its own values and its own way of life. This move is intellectually dishonest for multiple reasons: it ignores the Indian constitutional framework, which was developed by Indians through democratic deliberation and which explicitly guarantees the rights being violated; it ignores the voices of Indian scholars, activists, and lawyers who are themselves articulating the human rights critique from within Indian intellectual traditions; and it instrumentalizes the legitimate postcolonial critique of euro-centric bias in mainstream human rights discourse to serve the entirely different purpose of shielding state abuse of power.

1.5 The Role of the Judiciary: Complicity, Courage, and Collapse

The judiciary in any constitutional democracy is the institution through which rights find their practical expression. Abstract constitutional guarantees become real protections only when

courts enforce them against the state. The history of the Indian Supreme Court is a history of extraordinary moments of judicial courage, including the Kesavananda Bharati basic structure doctrine, the expansive reading of Article 21 to encompass a comprehensive right to life, the development of public interest litigation as a mechanism for accessing justice for the poor and marginalized, and the Maneka Gandhi decision's introduction of substantive due process into constitutional interpretation, interspersed with moments of catastrophic judicial failure, including the ADM Jabalpur capitulation during the Emergency, the refusal to hear habeas corpus petitions expeditiously in the early phases of the post-2019 Kashmir lockdown, and the systematic delay of constitutionally critical cases, including the CAA challenge, for years.

The contemporary Indian Supreme Court, under successive Chief Justices in the post-2019 period, has been marked by what many senior lawyers and constitutional scholars have described as a culture of institutional deference to the executive in politically sensitive matters. The Article 370 judgment, decided unanimously in December 2023, upheld the abrogation through a reasoning process that most international constitutional law scholars found constitutionally unsustainable. The UAPA bail jurisprudence has created a legal situation in which pretrial detention can extend for years without any meaningful judicial review of the grounds of detention. The Supreme Court's reluctance to hear emergency habeas corpus petitions in the Kashmir context has been documented and criticized by both Indian and international lawyers.

The philosopher John Rawls, in "A Theory of Justice," identified the judiciary as the exemplary institution of what he called "public reason": the mode of reasoning that addresses constitutional essentials and basic justice questions by reference to principles that can be shared by all citizens regardless of their comprehensive doctrines. When the judiciary fails at this function, when it reasons in ways that favor the government's position in politically sensitive cases not because the law clearly supports that position but because institutional prudence or ideological alignment leads it there, it undermines the legitimacy of the entire constitutional order. The court becomes not the guardian of the constitution but an instrument of the political forces that have captured it.

The Supreme Court's recent handling of the Manipur ethnic violence is instructive. The violence in Manipur, which began in May 2023 and killed over 200 people and displaced over 60,000, including the horrific mass sexual violence against women from the Kuki-Zo community that sparked national and international outrage when video evidence emerged in July 2023, was the subject of several rounds of Supreme Court hearing. The Court, to its credit, took cognizance of the issue and expressed concern. But the translation of that concern into effective relief for the victims and accountability for the perpetrators has been, as of early 2026, essentially nil. The BJP state government in Manipur remained in office throughout. The specific perpetrators of the mass sexual violence, captured on video, were prosecuted only slowly and inadequately. The broader failure of state protection that allowed the violence to continue for months was never subjected to serious judicial accountability. The HRW World Report 2025 noted that Indian authorities "failed to end the ethnic violence in the northeast state of Manipur."

The concept of judicial accountability, as analyzed by the Indian legal scholar Pratap Bhanu Mehta, involves three distinct dimensions: accountability to the law as written, accountability to constitutional values as interpreted, and accountability to the people on whose behalf constitutional rights are held in trust. When the Court fails on all three dimensions

simultaneously, the result is a constitutional crisis of legitimacy that cannot be resolved within the normal procedures of constitutional interpretation. It requires a deeper institutional reckoning: with the appointment process that has produced a judiciary insufficiently insulated from executive influence, with the culture of hierarchy and seniority within the legal profession that makes judicial independence difficult to maintain, and with the structural relationship between the judiciary and the political forces that determine the career prospects of judges in ways that create subtle incentives toward deference.

CHAPTER TWO: INDIA'S INTERNATIONAL LEGAL OBLIGATIONS: A FINAL AUDIT

2.1 The ICCPR and India's Systematic Non-Compliance

India ratified the International Covenant on Civil and Political Rights in 1979, forty-six years ago. It has been subject to the monitoring mechanisms of the UN Human Rights Committee throughout this period. The Committee's July 2024 review of India's fifth periodic report constitutes the most comprehensive and authoritative recent international assessment of India's compliance with its ICCPR obligations, and its findings demand sustained engagement.

The Committee raised concerns across virtually every major domain of civil and political rights. It expressed concern about discrimination and violence against minority communities, including religious minorities, Dalits, and tribal groups. It expressed concern about the use of broad and ill-defined laws to restrict civil liberties, specifically mentioning the UAPA, the PSA, and the sedition provisions. It expressed concern about impunity for security forces, specifically in the context of the AFSPA and the failure to prosecute security forces personnel for alleged extrajudicial killings in disturbed areas. It expressed concern about conditions in places of detention and the prevalence of torture and custodial violence. It expressed concern about restrictions on the freedom of expression, including internet shutdowns. It expressed concern about the treatment of human rights defenders, including through the misuse of the FCRA and counterterrorism laws.

The UN's statement accompanying the review noted that the Committee urged India to comply with its obligations under the ICCPR and to ensure that any counter-terrorism and other security measures in the so-called disturbed areas are temporary, proportionate, strictly necessary and subject to judicial review. It also asked India to establish a mechanism to initiate a process to acknowledge responsibility and ascertain the truth regarding human rights violations in disturbed areas.

Each of these concerns maps onto a specific set of ICCPR obligations. Article 2 requires states to ensure that any person whose rights are violated has an effective remedy; the combination of the AFSPA sanction requirement, the PSA revolving door, and the UAPA bail standard systematically denies effective remedies. Article 6 protects the right to life; extrajudicial killings under AFSPA, the arbitrary use of lethal force at the India-Bangladesh border, and the deaths of detainees like Father Stan Swamy all engage Article 6 obligations. Article 7 absolutely prohibits

torture and cruel, inhuman or degrading treatment; the Global Torture Index 2025 documented the pervasive use of torture in police custody and the absence of effective accountability mechanisms. Article 9 guarantees liberty and security of person and prohibits arbitrary detention; the UAPA, PSA, and NSA regimes comprehensively violate this provision. Article 14 guarantees the right to a fair trial; the UAPA's bail standard, the prolonged pretrial detention, the use of evidence that has been demonstrated by forensic experts to be fabricated in the Bhima Koregaon case, all violate this provision. Article 18 protects freedom of thought, conscience, and religion; the anti-conversion laws in twelve states, which effectively criminalize religious persuasion directed at members of the Hindu community, directly violate this provision. Article 19 protects freedom of expression; the internet shutdowns, the FCRA restrictions on civil society, the prosecution of journalists and social media users, all violate this provision. Article 25 protects political participation; the manipulation of election rules, the use of government machinery for partisan purposes, the compromised independence of the Election Commission, all engage Article 25 obligations.

The ICCPR also contains, in Article 1, a commitment to the right of self-determination. India's position in Kashmir, the denial of the promised plebiscite, the military occupation, the systematic suppression of political expression, all raise serious questions about India's compliance with this provision, questions that India has consistently refused to engage with in good faith.

The pattern of India's engagement with the UN Human Rights Committee illustrates the broader pattern of its relationship with international human rights oversight. India presents its periodic reports, sends delegations to Geneva to defend its record, and then systematically ignores the Committee's concluding observations. The concluding observations of each successive review cycle repeat many of the same concerns, because the violations they document have not been addressed, and in many cases have intensified. This pattern of performative engagement, the appearance of participation in the international human rights system without any genuine commitment to compliance, is a form of institutional manipulation that undermines the integrity of the entire treaty monitoring system.

2.2 The ICESCR and the Politics of Non-Justiciability

India's compliance with the International Covenant on Economic, Social and Cultural Rights is superficially more difficult to assess because economic, social and cultural rights do not admit of the same kind of bright-line analysis that applies to civil and political rights. The ICESCR requires progressive realization of rights "to the maximum of available resources," which gives states considerable latitude in determining the pace and modality of compliance. This flexibility has been systematically exploited by India to avoid accountability for what is, in substance, the comprehensive failure to ensure the minimum essential levels of economic and social rights for its most marginalized populations.

The UN Committee on Economic, Social and Cultural Rights has developed the concept of "minimum core obligations" to counter the tendency of states to use the progressive realization principle as an unlimited escape hatch. The minimum core concept holds that every state has an immediate, non-derogable obligation to ensure the satisfaction of minimum essential levels of each of the rights in the Covenant, including essential foodstuffs, essential primary health care,

basic shelter and housing, and the most basic forms of education. Below the minimum core, the progressive realization framework cannot apply: these are obligations of immediate effect.

The Oxfam India Wealth Report of 2024 confirmed that India's top one percent holds over forty percent of national wealth. At the same time, India ranked 105th out of 127 countries in the Global Hunger Index 2024, with child malnutrition classified as "serious." The contradiction between extraordinary elite wealth and pervasive minimum-level deprivation is not simply an unfortunate feature of development; it is a policy choice, implemented through a tax regime that favors capital, a welfare system that is chronically underfunded relative to India's fiscal capacity, a labor market that keeps wages for the most vulnerable workers at subsistence levels, and a public distribution system riddled with corruption and exclusion errors that systematically fail the people who depend on it most.

The National Food Security Act of 2013, which established a right to subsidized food grains, is the most significant legislative expression of India's ICESCR obligations in the food domain. The Supreme Court's public interest litigation monitoring of the right to food, in the PUCL case initiated in 2001, has produced hundreds of interim orders and several significant substantive directions. But the implementation of these directions has been deeply inconsistent. Research by the Right to Food Campaign, a network of civil society organizations, has consistently documented that exclusion errors in the public distribution system, the failure to enroll eligible households in the beneficiary list, affect tens of millions of people. Ghost beneficiaries, corruption in grain distribution, and administrative failures compound the problem. The COVID-19 pandemic exposed the inadequacy of the food security system most dramatically: millions of migrant workers were stranded without food, shelter, or income when the national lockdown was announced with four hours notice in March 2020, in what multiple Supreme Court judgments subsequently characterized as an administrative failure of the first order.

The right to education, guaranteed by Article 21A of the Constitution and implemented through the Right to Education Act 2009, provides a similar picture of formal rights without effective enforcement. The Annual Status of Education Report (ASER), which has surveyed learning outcomes in rural India annually since 2005, has consistently found that a majority of children in government schools by the age of ten or twelve cannot read a simple text or do basic arithmetic. The 2023 ASER report found that while enrollment rates have improved, learning outcomes remain deeply inadequate, with a majority of Class 5 students unable to read a Class 2 text in many states. This is not a marginal failure; it is the systematic reproduction of educational deprivation across generations of children, overwhelmingly from Dalit, Adivasi, and Muslim families, in ways that lock in economic disadvantage and social exclusion across lifetimes.

The right to health presents the same pattern. India's public health expenditure, at approximately 1.5 percent of GDP as of 2024, is among the lowest in the world for a country at its income level. The consequence is a public health system chronically underfunded, understaffed, and ill-equipped, that fails millions of people who cannot afford private care. The rape and murder of a thirty-one-year old doctor in a government hospital in Kolkata in August 2024, which sparked nationwide protests demanding justice and better safety in medical campuses and hospitals, illuminated both the appalling conditions in the public health system and the vulnerability of healthcare workers, particularly women, within it. The HRW World Report 2025 noted that the

case "cast a spotlight on how millions of Indian women remain exposed to abuse in the workplace and continue to face severe barriers to justice for sexual violence."

2.3 The Convention Against Torture: The Refused Visit and the Organized Impunity

India signed the Convention Against Torture in 1997 but has never ratified it, a deliberate choice that reflects the state's awareness that ratification would subject it to treaty body monitoring on one of its most comprehensively documented failure domains. The Global Torture Index 2025 rated India's institutional mechanisms for addressing torture as deeply inadequate, specifically citing the NHRC's lack of jurisdiction over violations by armed forces, the absence of effective victim and witness protection laws, and the involvement of police officers in investigations of police misconduct.

The UN Special Rapporteur on Torture first requested a visit to India in 1999. That request has been reiterated multiple times, most recently in 2021. As of April 2026, the visit has not taken place, and there are no credible indications that it will take place in the foreseeable future. This twenty-six-year refusal to permit a visit by the most authoritative independent international monitor of torture is itself one of the most powerful pieces of evidence of India's bad faith engagement with international human rights mechanisms.

The Global Alliance of National Human Rights Institutions, in its 45th session held in March 2025, recommended downgrading India's National Human Rights Commission from "A" status to "B" status, citing concerns about the involvement of police officers in investigations that may impact its impartiality. This recommendation is significant because the NHRC was supposed to be the primary domestic accountability mechanism for human rights violations, including by security forces. The downgrading recommendation reflects a finding that the NHRC does not in practice function as the independent and effective human rights institution that the Paris Principles require.

The patterns of torture documented across India's detention system are extensive and consistent. The use of "third degree" interrogation methods, the colloquial Indian term for torture in police custody, is documented in reports by the People's Union for Civil Liberties, the Amnesty International India's reports before its forced closure of Indian operations in 2020, the NHRC's own complaint records, and the testimonies of survivors and their lawyers. Common methods include beatings, particularly to the soles of the feet in the method known as "falanga," electric shocks, sensory deprivation, stress positions, sleep deprivation, and, in the case of women detainees, sexual violence and the threat of sexual violence. Custodial deaths, which inevitably involve torture in many cases, were registered at 113 deaths in police custody and 1,535 deaths in judicial custody in the first eight months of 2025 alone, according to data registered by the NHRC as reported in the HRW World Report 2026.

The legal framework governing accountability for torture in India is comprehensively inadequate. Section 330 of the former IPC (now BNS equivalent) criminalizes voluntarily causing hurt to extort confession, and there are provisions relating to wrongful confinement and wrongful restraint. But prosecutions under these provisions against police or military personnel are extraordinarily rare. The barriers include the requirement of prior sanction for prosecution in

the case of security forces under AFSPA, the practical difficulty of establishing evidence in the absence of independent forensic capacity in most police stations, the intimidation of witnesses, the hostility of the police institution to complaints against its members, and the generally deferential attitude of lower courts toward police testimony.

The international legal standard, as established by the jurisprudence of the UN Committee Against Torture and the European Court of Human Rights in cases like Ireland v. United Kingdom (1978), is clear: any state that consistently fails to investigate and prosecute credible allegations of torture bears international responsibility for the torture, regardless of whether individual officers can be identified. India's consistent failure to investigate, prosecute, and punish torturers within its security forces means that it bears international legal responsibility for a systemic practice of torture that cannot be characterized as isolated individual misconduct.

2.4 International Humanitarian Law and Kashmir After Pahalgam

The April 2025 Pahalgam terrorist attack, which killed 26 people, mostly Hindu tourists, was a horrific act of violence that the UN Special Rapporteurs unequivocally condemned. The attack and its aftermath illustrate the complex application of international humanitarian law and human rights law to the situation in Jammu and Kashmir.

India's response to the Pahalgam attack included, according to the OHCHR statement of November 2025, the arrest and detention of approximately 2,800 individuals, including journalists and human rights defenders. Some were detained and charged under the Public Safety Act or the UAPA, which permit prolonged detention without charge or trial and contain vague and overbroad definitions of terrorism. Indian authorities also suspended mobile internet services and blocked around 8,000 social media accounts including those of journalists and independent media outlets. These measures were criticized by UN Special Rapporteurs as violating international human rights law even in the context of a legitimate security response to a terrorist attack.

The response also included the India-Pakistan military confrontation described in early 2026 reporting as a "four-day armed conflict," which raises questions about the application of international humanitarian law, specifically the Geneva Conventions and their Additional Protocols, to any conduct of hostilities. The formal legal analysis of this conflict is complex and disputed; what is beyond dispute is that any use of force that results in civilian casualties, whatever the military objective, is subject to the principles of distinction and proportionality under international humanitarian law, and that those principles require investigation and accountability for any violations.

The Amnesty International report of April 2026 documented the aftermath of the Pahalgam attack and the Indian government's response to it in disturbing detail. On April 27, 2025, Lucknow police filed an FIR against folk singer Neha Singh Rathore for "objectionable remarks" about the Pahalgam attack on social media. On May 18, 2025, Haryana police registered two FIRs against Ashoka University professor Ali Khan Mahmudabad for social media posts about "Operation Sindoor," resulting in his arrest on charges relating to maintaining communal harmony and incitement. The pattern is deeply familiar: a terrorist attack creates a political

climate in which any criticism of the government's response, or any questioning of the narrative it constructs around the attack, is framed as disloyalty or communal incitement and subjected to criminal prosecution.

The relationship between counterterrorism law and human rights law is theoretically complex and practically urgent. The UN Security Council Resolution 1566 (2004) emphasizes that all measures adopted to combat terrorism must comply with international law, including international human rights law, international humanitarian law, and international refugee law. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has consistently articulated the principle that effective counterterrorism requires, rather than conflicts with, respect for human rights, because it is the violation of human rights that produces the conditions of grievance and alienation from which terrorist organizations draw their recruits and their legitimacy.

This principle has particular relevance to Kashmir. The insurgency that began in 1989 was not born in a vacuum; it emerged from a specific political history of electoral manipulation, the imprisonment of political leaders, the systematic denial of the promised plebiscite, and the aggressive "Indianization" of Kashmiri political life that had been underway since the late 1980s. The brutality of the security forces' response to the insurgency, documented in the mass graves discovered at multiple locations in the former state, the enforced disappearances, the systematic use of torture, and the use of sexual violence as a tool of counterinsurgency, generated new layers of grievance that sustained the insurgency long after its original political moment had passed. The post-2019 intensification of security force operations and the political suppression that followed the abrogation of Article 370 has, by multiple accounts from researchers with field access, deepened rather than resolved the political alienation that creates the conditions for terrorist recruitment.

2.5 India's Relationship with International Oversight Mechanisms: A Pattern of Contempt

The joint statement issued by multiple international human rights organizations in October 2025, following India's election to the UN Human Rights Council for 2026-2028, documented a comprehensive pattern of non-cooperation with international oversight mechanisms. India maintains a standing invitation to UN Special Procedures but has accepted only two country visits in the past decade. As of October 2025, at least 19 visit requests remain pending, including the Special Rapporteur on torture request first made in 1999. Since 2011, India has responded to roughly one-third of over 200 communications sent by Special Procedures, a response rate that reflects a "broader unwillingness to cooperate" that "contravenes the principle of good-faith engagement required under the UN Charter."

The election of India to the Human Rights Council for 2026-2028 raises acute questions about the Council's credibility and effectiveness. UN General Assembly Resolution 60/251, which established the Human Rights Council, specifies that member states "shall uphold the highest standards in the promotion and protection of human rights" and "shall fully cooperate with the Council." India's record demonstrates that it meets neither of these criteria. Its election, on an uncontested "closed" slate presented by the Asia regional group, reflects not a genuine

assessment of India's human rights record but the political dynamics of a regional grouping that prioritizes solidarity over accountability.

The irony is that India's presence on the Human Rights Council gives it a platform to influence the Council's agenda, to participate in decisions about investigations and accountability mechanisms for other countries, and to use its Council membership as evidence of international legitimacy in deflecting human rights criticism. The statement from the human rights organizations that challenged India's election candidacy noted that India had used its previous Council membership period (2019-2024) to abstain repeatedly on key resolutions establishing investigations or accountability mechanisms for serious gross and systematic human rights violations, including resolutions on Sri Lanka, Myanmar, Xinjiang, and the Occupied Palestinian Territories. This record of abstentions reflects a consistent geopolitical interest in protecting the norm of non-interference from international human rights accountability mechanisms, a norm that India invokes with respect to its own record.

The theoretical analysis of India's position is that it embodies a particular version of the tension between sovereignty and human rights accountability that has characterized the international human rights system since its inception. The state sovereignty norm, embodied in Article 2(7) of the UN Charter's prohibition of interference in matters "essentially within the domestic jurisdiction" of states, was already in tension with the human rights provisions of the Charter from the beginning. The progressive development of international human rights law since 1945, through the UDHR, the Covenants, the specialized conventions, and the jurisprudence of treaty bodies and regional courts, has progressively narrowed the scope of domestic jurisdiction, establishing that certain matters, including systematic violations of fundamental rights, are not "essentially within domestic jurisdiction" at all.

India's position at the Human Rights Council simultaneously asserts the domestic jurisdiction principle and uses the Council's platform for geopolitical purposes. This double game, performing engagement with international human rights norms while systematically resisting international accountability, is increasingly recognized by human rights scholars and advocates as a strategic adaptation to the international human rights system rather than genuine participation in it.

CHAPTER THREE: THE CASE FOR UN INTERVENTION AND INTERNATIONAL ACCOUNTABILITY

3.1 The Evolving Doctrine of the Responsibility to Protect

The Responsibility to Protect (R2P) doctrine, endorsed by the UN General Assembly in the 2005 World Summit Outcome Document, represents the most significant development in the relationship between state sovereignty and international accountability since the establishment of the UN. The doctrine holds that states have a primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity; that the international community has a responsibility to assist states in meeting this responsibility; and that when a

state "manifestly fails" to protect its population, the international community has a responsibility to take collective action through the Security Council, up to and including coercive military action.

The R2P doctrine was developed in response to the failures of the 1990s, the Rwandan genocide and the Srebrenica massacre, in which the international community stood by while mass atrocities occurred. Its subsequent application has been controversial: the NATO intervention in Libya in 2011, authorized under R2P rhetoric by Security Council Resolution 1973, was widely criticized for exceeding the mandate of protection to encompass regime change. This controversy has contributed to a significant chill on R2P's application in subsequent situations.

The application of R2P to India requires careful analysis of both the doctrine's content and the political realities of its implementation. The narrowest interpretation of R2P limits its application to the four specific crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. Are India's violations sufficient to meet any of these thresholds? The situation in Manipur, where systematic sexual violence was used against members of the Kuki-Zo community by or in association with Meitei ethnic groups and where the state government's response was characterized by the HRW World Report 2025 as "deepening longstanding anger and distrust among the communities through polarizing policies," raises questions about whether the violence met the threshold of crimes against humanity, which under the Rome Statute require acts committed as part of a widespread or systematic attack directed against a civilian population. The enforced disappearances in Jammu and Kashmir, over 8,000 documented cases, clearly meet the definition of enforced disappearances under international law and may constitute crimes against humanity when committed as part of a systematic policy.

The systematic demolition of Muslim homes in BJP-governed states, which has been documented extensively by Amnesty International and Human Rights Watch, raises questions about whether these demolitions, implemented through the mechanisms of municipal governance but targeting a specific religious community, constitute acts of ethnic cleansing in the sense of creating an ethnically homogeneous area through the forced removal of a group's members. International law scholars have debated whether ethnic cleansing requires the physical elimination of population or can be achieved through property destruction and expulsion; the 2026 documentation of the illegal expulsion of hundreds of Bengali-speaking Muslims to Bangladesh adds a dimension of literal expulsion to the analysis.

However, the R2P doctrine's practical implementation faces a fundamental structural obstacle in the case of India: the UN Security Council. India is not a permanent member of the Security Council, but its closest strategic partners, the United States and Russia (and to varying degrees China), are. The United States, which under both the Trump and Biden administrations has deepened its strategic partnership with India, has consistently declined to take strong positions on India's human rights violations at the Security Council. Russia, which has its own reasons for not wanting international accountability mechanisms used against nuclear-armed states with permanent allies, is unlikely to permit Security Council action on India. China has its own political relationship with India that makes Security Council action politically complex.

The theoretical conclusion is that R2P, even if applicable in principle to aspects of India's human rights situation, is unlikely to be invoked through the Security Council. This does not mean that the international community has no options; it means that the options available operate outside the formal R2P framework and require different analytical frameworks.

3.2 Universal Jurisdiction and Individual Criminal Accountability

Universal jurisdiction is the principle that certain international crimes are so serious, specifically genocide, crimes against humanity, war crimes, and in some jurisdictions torture, that any state may prosecute them regardless of where they were committed and regardless of the nationality of the perpetrators or victims. The principle is grounded in the legal theory that certain crimes are offenses against the entire international community, "hostis humani generis" (enemies of all mankind), and therefore subject to universal prosecution authority.

Universal jurisdiction has been exercised successfully in a number of significant cases, including the prosecution of Augusto Pinochet in the United Kingdom, the prosecution of Rwandan genocide suspects in Belgium, and the prosecution of Khmer Rouge leaders in Cambodia. But it has also generated significant political controversy, particularly when it has been invoked against sitting heads of state or senior officials of major powers. The arrest of Pinochet in the UK on a Spanish warrant in 1998 created a diplomatic crisis; the ICC arrest warrants for Vladimir Putin over Ukraine and for Benjamin Netanyahu over Gaza have been contested by major powers.

In the Indian context, universal jurisdiction could in principle apply to credibly documented crimes against humanity, including the systematic use of torture in detention, the enforced disappearances in Jammu and Kashmir, and potentially the ethnic cleansing dimensions of the demolitions and expulsions documented in recent years. However, the practical barriers are formidable. India is not a signatory to the Rome Statute of the International Criminal Court, which means the ICC has no jurisdiction over crimes committed in India by Indian nationals. The UN Security Council could refer the situation to the ICC under Article 13(b) of the Rome Statute, as it did with Sudan (Darfur) in 2005 and Libya in 2011, but as analyzed above, political realities make such a referral unlikely.

National courts exercising universal jurisdiction are a more plausible avenue. The cases of Pinochet in the UK and Rwandan génocidaires in Belgium demonstrate that determined prosecutors and political will in third countries can lead to accountability proceedings for international crimes regardless of the state of origin's cooperation. However, these cases involved individuals who had lost political power and were physically present in the prosecuting country. The universal jurisdiction prosecution of sitting Indian officials would require either the presence of those officials in a jurisdiction that has enacted universal jurisdiction legislation and has the political will to prosecute, or an extraordinary degree of judicial and political courage in the prosecuting state.

The more practically significant application of international accountability principles in the Indian context operates through what can be called the "accountability ecosystem": the network of UN treaty bodies, special procedures, universal periodic review, international civil society organizations, diaspora communities, foreign court systems (for violations against foreign

nationals or by Indian intelligence agencies abroad, as in the alleged assassination plots in Canada and the US), and international media that collectively exercise a form of distributed accountability that, while not constituting formal legal accountability, creates political costs for systematic violation and creates the evidentiary record that future formal accountability mechanisms can draw upon.

The allegations of Indian intelligence services' involvement in assassination plots against Khalistani separatist leaders in Canada, the United States, and Pakistan, documented in diplomatic communications and criminal proceedings in Canada and the United States, represent a qualitatively different category of international accountability question. If proven, these operations would constitute violations of the territorial sovereignty and legal jurisdiction of the states concerned, violations of the UN Charter's prohibition on the use of force, and potentially violations of the prohibition on political assassination under customary international law. The Nijjar killing in Canada in June 2023 and the subsequent diplomatic crisis between India and Canada, in which Canada expelled Indian diplomats and India retaliated in kind, brought this issue to the highest level of bilateral diplomatic discourse. The ongoing criminal proceedings in Canada and the related FBI investigation in the United States regarding an alleged plot to kill a Sikh separatist leader in New York represent the most significant formal legal accountability proceedings related to Indian state conduct abroad in recent decades.

3.3 The Special Procedures System: Unfulfilled Potential

The UN Special Procedures system, consisting of Special Rapporteurs, Independent Experts, and Working Groups mandated by the Human Rights Council to monitor specific thematic or country situations, represents one of the most important tools of international human rights accountability. The system is cheap (mandate holders serve without remuneration), flexible (mandate holders can respond quickly to urgent situations), expert (mandate holders are typically leading scholars or practitioners in their fields), and comprehensive (mandates cover virtually every domain of human rights concern).

India's engagement with the Special Procedures system has been, as documented above, one of systematic non-cooperation. The twenty-six-year refusal to permit a visit by the Special Rapporteur on Torture is the most egregious single example, but the pattern extends across virtually all mandate areas. Following the Pahalgam attack and its aftermath, the Special Rapporteurs' November 2025 statement expressing alarm about the mass detentions, internet shutdowns, and social media account blocking was met with what is best described as dismissive non-engagement from the Indian government.

The theoretical significance of this non-engagement is that it reveals the limits of a system premised on the voluntary cooperation of states. The Special Procedures system can visit a country only if the state consents; it can make recommendations but cannot enforce them; it can issue urgent appeals but cannot compel response. In a world of genuinely rights-respecting states, these limitations would not matter much, because those states would have both the incentive and the institutional capacity to respond constructively to independent expert engagement. But in a world where states use the language of cooperation while systematically resisting accountability, the voluntary character of the system becomes a structural vulnerability.

The enhancement of the Special Procedures system requires structural reforms that have been discussed in academic and advocacy circles but have not found the political support necessary for implementation. These include giving mandate holders independent investigative capacity, not dependent on state cooperation, including through remote monitoring, satellite evidence, and engagement with diaspora communities; establishing a formal mechanism for responding to states' non-cooperation with communications; creating mandatory reporting to the Security Council when mandate holders document gross and systematic violations in situations with potential implications for international peace and security; and establishing a standing capacity for emergency missions that can operate in acute crisis situations without waiting for state consent.

The Office of the UN High Commissioner for Human Rights (OHCHR) plays a complementary role. The OHCHR's statements on India, including the March 2025 statement by the High Commissioner highlighting concerns about violence and displacement in Manipur and the shrinking civic space in Jammu and Kashmir, dismissed by the Indian government, represent the exercise of the Commissioner's mandate to speak out on serious human rights situations globally. Strengthening the OHCHR's capacity to document, analyze, and publicly report on the situation in India, including through the establishment of a specific India monitoring mechanism under the Council's enhanced procedures, is one of the most practical short-term recommendations available.

3.4 The Human Rights Council and the Universal Periodic Review

The Universal Periodic Review (UPR), established by General Assembly Resolution 60/251 as part of the new Human Rights Council mechanism, is the most comprehensive and formally universal mechanism for international human rights accountability. Every UN member state is reviewed under the UPR on a regular cycle, currently four-and-a-half years. The review involves an examination of the state's human rights record by the full Council, based on reports from the state itself, from UN agencies and treaty bodies, and from civil society organizations. Other UN member states make recommendations, which the reviewed state may "accept" or "note" (a diplomatic euphemism for rejection).

India's UPR reviews have generated hundreds of recommendations from other states, covering virtually every domain of human rights concern. India has accepted many recommendations in formal terms while taking no meaningful action to implement them. It has rejected or "noted" recommendations on the most sensitive issues, including the AFSPA, the PSA, the UAPA's bail provisions, and the Citizenship Amendment Act. This pattern of selective acceptance combined with non-implementation represents another form of the performative engagement strategy: using the language of UPR participation to claim a track record of responsiveness while substantively resisting accountability.

The UPR's structural weakness is the absence of any enforcement mechanism for accepted recommendations. States that accept recommendations are not subject to any monitoring, verification, or consequence for non-implementation. The entire system relies on the assumption that the political cost of documented non-implementation will be sufficient motivation for compliance. In India's case, this assumption has been consistently falsified. The political costs of

non-compliance with international human rights standards, in terms of the government's domestic political standing, are negligible or indeed negative, given the Hindu nationalist framework within which international human rights criticism is presented as external interference that the patriotic Indian should resent and resist.

The theoretical solution is to move the UPR toward a consequence-based system in which documented non-implementation of accepted recommendations triggers specific responses: automatic referral to special procedures for investigation, enhanced reporting requirements, conditioning of certain forms of UN cooperation or assistance on demonstrated progress, and in the most serious cases, suspension of Council membership. These reforms would require amendment of the Council's founding resolution, which would require a General Assembly vote and is therefore subject to political constraints. However, the increasing documentation of flagrant non-compliance by multiple states, not only India but also Saudi Arabia, China, Russia, and others, has created a growing body of scholarly and advocacy opinion that the current UPR system is insufficiently consequential to fulfill its accountability function.

CHAPTER FOUR: INDIA AS A REGIONAL HEGEMON: THE RIGHTS OF SMALLER NEIGHBORS

4.1 The Theoretical Framework of Regional Hegemony and International Law

The concept of regional hegemony refers to the dominant position of a single state in a geographically defined subsystem of the international order, a position based on a combination of military, economic, demographic, and political power that allows the dominant state to exercise decisive influence over the behavior of neighboring states without necessarily exercising formal sovereignty over them. Regional hegemons exist across the globe, including the United States in the Western Hemisphere, China in East Asia, and India in South Asia.

The relationship between regional hegemony and international law is complex and contested. The classical Westphalian model of international law posits formal equality of sovereign states, which would preclude any legally recognized asymmetry between a regional hegemon and its neighbors. But the formal equality of the Westphalian system has always coexisted uneasily with the material inequality of the international order: the formal right of a small state to equal treatment in international law has rarely translated into an actual ability to vindicate that right against a much larger and more powerful neighbor.

The Grotian tradition, developed from Hugo Grotius's foundational seventeenth-century works on international law, provides a framework for thinking about the duties that attach to power. Grotius argued that states in the international order, like individuals in domestic society, are subject to moral obligations generated by natural law, and that powerful states have specific obligations not to use their power to the detriment of weaker states. The development of this tradition into the modern international law of non-aggression, non-interference, and sovereign equality represents the legal crystallization of the Grotian insight that power creates obligations.

The Indian approach to its regional role has systematically violated both the formal legal framework and the Grotian moral framework. The use of India's control over river systems as a form of coercive leverage against Bangladesh, Nepal, and Pakistan; the naval and maritime pressure against Sri Lanka; the economic blockade of Nepal in 2015-2016; the political interference in the internal affairs of smaller neighbors through intelligence operations and support for or opposition to particular political forces; and the military pressure along borders with multiple neighbors, all represent the exercise of hegemonic power in ways that violate the international legal principles of non-interference, good neighborliness, and sovereign equality.

The specific framework of international water law is particularly illuminating. The Convention on the Law of the Non-Navigational Uses of International Watercourses (the 1997 Watercourses Convention), which entered into force in 2014, establishes a framework of equitable and reasonable utilization of international watercourses, the obligation not to cause significant harm to other watercourse states, the obligation to cooperate and share information, and the obligation of regular and timely notification of planned measures that may have significant adverse effects on other states. India has not ratified this convention, a deliberate choice that preserves its freedom to use transboundary rivers as instruments of political and economic leverage without being bound by the Convention's requirements.

The theoretical framework of "water imperialism," developed by scholars including Tony Allan, who coined the concept of "virtual water," and Mehdi Pordeli in more recent work on South Asian hydropolitics, describes how control over water resources in water-scarce regions translates into a form of power analogous to imperial control in earlier eras. India's construction of barrages and dams on rivers that flow into Bangladesh, Nepal, and Pakistan, without adequate prior consultation or agreed frameworks for equitable water sharing, represents the exercise of water imperialism through the mechanisms of infrastructure development rather than through formal colonial administration. The consequences for downstream states are severe: the Farakka Barrage on the Ganges has dramatically reduced dry-season water flows into Bangladesh, affecting agriculture, fisheries, and ecological systems that millions of people depend on for their livelihoods. The Teesta River dispute between India and Bangladesh represents another dimension of the same problem.

4.2 The Bangladesh Relationship: Water, Migration, and the BSF's Deadly Border

The India-Bangladesh relationship illustrates the multiple dimensions of India's hegemonic conduct toward smaller neighbors with particular clarity. Bangladesh is significantly dependent on India for access to international markets, for energy imports, for water from shared rivers, and for political legitimacy, given India's decisive role in Bangladesh's liberation in 1971. This dependency structure gives India enormous leverage over Bangladesh's political and economic choices, leverage that India has consistently exercised in ways that serve its own interests at the expense of Bangladesh's population.

The Border Security Force's conduct along the India-Bangladesh border is a documented human rights crisis. The HRW World Report 2026 noted that India's Border Security Force allegedly killed at least 10 Bangladeshis at the India-Bangladesh border in the first four months of 2025 alone. This is not a recent phenomenon. Odhikar, the Bangladeshi human rights organization, has

documented hundreds of killings at the India-Bangladesh border over the past two decades, mostly of cattle traders, small-scale cross-border traders, and migrant workers. The BSF has used lethal force against individuals who by definition do not represent any threat to national security, applying what amounts to a shoot-to-kill policy against people engaged in informal cross-border trade that has existed for generations.

The killings at the India-Bangladesh border violate multiple provisions of international human rights law. The right to life under Article 6 of the ICCPR and under customary international law is the most fundamental. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the UN Eighth Congress on the Prevention of Crime and the Treatment of Offenders in 1990, establish that law enforcement officials may use lethal force only when strictly unavoidable to protect life, that they must give a clear warning before doing so when feasible, and that they must minimize injury and damage. The BSF's killings at the border systemically violate all of these principles: the victims are typically people who are fleeing, who are not threatening the lives of the officers, and who receive no warning before being shot.

The human rights dimension of India's illegal expulsion of Bengali-speaking Muslims to Bangladesh, documented in the HRW World Report 2026, adds another critical layer to the analysis. The report documented that Indian authorities illegally expelled hundreds of Bengali-speaking Muslims from BJP-run states to Bangladesh without due process, claiming they were "illegal immigrants." Some of those expelled were Indian citizens. The expulsions were conducted by forcing people into the Padma river, requiring them to swim to the Bangladeshi side. This conduct violates multiple principles of international law including the principle of non-refoulement under international refugee law, the prohibition of collective expulsion of aliens under Article 4 of Protocol 4 to the European Convention on Human Rights (which while not applicable to India reflects customary international law), and the prohibition of statelessness under the 1961 Convention on the Reduction of Statelessness.

The political economy of the India-Bangladesh relationship also has profound human rights implications. India's decision to not grant land transit rights to Bangladesh for decades, while expecting and receiving transit routes through Bangladesh territory for India's northeastern states, reflects the asymmetric logic of hegemonic power in which the larger state's interests consistently take precedence over the smaller state's. The Teesta water dispute, in which India has failed for decades to conclude a water-sharing agreement that both countries' governments have at various points agreed in principle, reflects the same asymmetry: India's domestic political calculations, specifically the opposition of the West Bengal state government to any reduction in Teesta flows, have consistently taken precedence over Bangladesh's urgent need for dry-season water for agriculture in the Teesta-dependent region.

4.3 Nepal, Bhutan, and the Architecture of Dependency

The relationship between India and Nepal is one of the most complex and troubling expressions of Indian hegemony in South Asia. Nepal is constitutionally and economically deeply connected to India: the India-Nepal Treaty of Peace and Friendship of 1950, which grants citizens of both countries equal rights in the other country, is presented by India as evidence of special closeness

but is experienced by many Nepalis as an instrument of Indian dominance, giving India economic and demographic access to Nepal that far exceeds what Nepal receives in return.

The 2015-2016 economic blockade of Nepal, which followed Nepal's adoption of a new Constitution that India objected to, was one of the most blatant exercises of economic coercion by one state against another in recent South Asian history. The blockade, which Indian officials denied imposing while it was in operation, severely restricted the flow of essential goods, including fuel, medicines, and food, into a landlocked country entirely dependent on India for access to international markets. The timing was particularly callous: Nepal was still recovering from the devastating 2015 earthquake when the blockade began. The Nepali government and population interpreted the blockade as Indian punishment for adopting a constitution that India considered insufficiently protective of the Madhesi community's interests, effectively asserting India's right to veto Nepal's constitutional choices.

The international legal analysis is stark. The UN Charter's Article 2(4) prohibits not only the use of armed force against the territorial integrity of states but also the threat of such force. The principle of non-interference in the internal affairs of states, which India consistently invokes with respect to international criticism of its own human rights record, prohibits precisely the kind of economic coercion designed to influence Nepal's domestic political choices that the blockade represented. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (1970) specifically prohibits coercing states to subordinate the exercise of their sovereign rights.

Bhutan presents a different but equally instructive case. The India-Bhutan relationship is governed by the 2007 Treaty of Friendship, which replaced the earlier 1949 treaty and was designed to give Bhutan greater formal autonomy in its foreign policy. In practice, Bhutan's foreign and security policy remains heavily influenced by India, which provides significant financial support and whose security concerns, particularly regarding Chinese incursions in the Doklam area, directly shape Bhutan's diplomatic posture. The 2017 Doklam standoff between Indian and Chinese troops in the disputed tri-junction area between India, China, and Bhutan demonstrated both the depth of India's security engagement with Bhutan and the degree to which Bhutan's territorial disputes are effectively managed by India on its behalf, a management that Bhutan may not have fully consented to in the same sense that a genuinely sovereign state would.

The human rights implications of hegemonic dependency in these relationships operate primarily through political rather than legal mechanisms. When Nepal's political leaders make domestic policy choices, they must always calculate the likely Indian response and the consequences of that response for Nepal's economic lifeline. This anticipatory compliance with India's preferences is not compelled by any specific legal order but is enforced by the structural fact of dependency. The result is a systematic narrowing of Nepal's political sovereignty that does not show up in formal treaty analysis but is vividly experienced by Nepali politicians, businesspeople, and ordinary citizens.

4.4 Sri Lanka and Pakistan: Competing Interests, Consistent Instrumentalism

India's relationships with Sri Lanka and Pakistan illustrate two contrasting expressions of its regional hegemonic logic. The Sri Lanka relationship demonstrates the selective deployment of human rights concern for strategic purposes; the Pakistan relationship demonstrates the use of the security frame to avoid any accountability for the human rights dimensions of India-Pakistan tensions.

In the Sri Lankan civil war context, India played a complex role. It initially supported Tamil militant groups, including the LTTE, as a counter to Sri Lankan policies and as an expression of Tamil Nadu political interests in the Indian domestic arena. It then intervened militarily through the Indo-Sri Lanka Accord of 1987 and the subsequent deployment of the Indian Peace Keeping Force (IPKF), which itself committed serious human rights violations including extrajudicial killings and sexual violence against Tamil civilians. And then it stood aside while the Sri Lankan army conducted its final devastating military campaign against the LTTE in 2009, which the UN Panel of Experts report of 2011 found involved war crimes on both sides, including the shelling of hospitals and civilians concentrated in a declared "no-fire zone" by Sri Lankan forces, potentially causing the deaths of tens of thousands of Tamil civilians.

India's abstention from meaningful criticism of the Sri Lankan military campaign's conduct, and its consistent use of its UN Security Council position to protect Sri Lanka from formal accountability mechanisms, reflects the strategic calculation that a Sri Lanka that is diplomatically dependent on India for protection from international accountability is a more useful regional partner than a Sri Lanka that has been subjected to international scrutiny. The human rights of Tamil civilians, who were the immediate victims of both sides' conduct, were a distant secondary consideration in this calculation.

The Pakistan dimension of India's regional posture is defined by the dominant security frame of the Kashmir dispute. The portrayal of Pakistan as the primary source of terrorism threatening India, while drawing on genuine evidence of Pakistani state support for militant groups operating in Kashmir, has been systematically extended beyond those legitimate security concerns to serve as a blanket justification for India's own human rights violations in Kashmir. The argument takes the form: Pakistan supports terrorism in Kashmir; therefore any security operation in Kashmir is legitimate; therefore international criticism of Indian operations in Kashmir is effectively support for Pakistani terrorism. This argument has been spectacularly successful in neutralizing some Western criticism of Indian conduct in Kashmir, because it aligns India's framing with the post-2001 global "War on Terror" narrative within which any state claiming to be fighting terrorism was granted an enormous degree of deference.

The theoretical analysis of this situation draws on what Balakrishnan Rajagopal, in his work "International Law from Below," calls the "securitization of rights": the process through which human rights claims by oppressed or marginalized communities are reframed as security threats by the states that are the primary beneficiaries of those communities' subordination. When Kashmiri civil society organizations document enforced disappearances and present their documentation to international human rights bodies, Indian government spokespersons characterize those organizations as fronts for Pakistani intelligence. When Pakistani advocacy

organizations raise the Kashmir situation in international forums, they are characterized as instruments of anti-India propaganda. The securitization move prevents the legitimate human rights issues from being engaged on their merits, because any engagement is framed as serving the adversary's geopolitical agenda.

4.5 The Maldives, Seychelles, and Maritime Hegemony

India's hegemonic reach extends into the Indian Ocean in ways that receive less attention than the South Asian mainland dynamics but that deserve specific analysis. The Maldives relationship, which has been politically turbulent since the 2023 election of President Mohamed Muizzu on an explicitly "India Out" platform, illustrates the dynamics of island state sovereignty in the shadow of a maritime hegemon.

The Maldives has historically been heavily dependent on India for tourism revenues (given India's largest source of tourists), for military and coast guard training and assistance, for medical evacuation services, and for political support in the international arena. When the Muizzu government began shifting toward China, reducing the Indian military presence in the Maldives, and using overtly anti-India rhetoric, India's response included the mobilization of Indian social media boycotts of Maldives tourism and diplomatic pressure, ultimately leading to the Maldivian government's partial retreat from its most provocative positions.

The human rights implications of this dynamic are primarily about political sovereignty: the ability of a small island state to make genuine political choices about its external alignments without being subject to economic coercion from a larger neighbor. The principle of non-interference in internal affairs, which includes the right to determine one's own external relations, is formally guaranteed to all states regardless of size under the UN Charter. But the material enforcement of this principle against a hegemonic neighbor is extremely difficult for a state as economically dependent as the Maldives.

The Seychelles and Mauritius cases raise different issues around the presence of Indian military or surveillance infrastructure and the negotiation of agreements that small island states may not have the bargaining power to fully evaluate. The broader Indian Ocean Strategic Framework involves Indian naval expansion and the development of a network of facilities and agreements designed to ensure Indian maritime dominance in the region, which has implications for the genuine sovereignty of island states that find themselves within the sphere of this expanding maritime order.

CHAPTER FIVE: CONSTITUTIONAL TRANSFORMATION AND TRANSITIONAL JUSTICE

5.1 The Transformative Constitution: Theory and Indian Reality

The theory of the transformative constitution, developed primarily in the South African context by Karl Klare in his 1998 article "Legal Culture and Transformative Constitutionalism" in the

South African Journal on Human Rights, holds that certain constitutions are not merely frameworks for the organization of existing power relations but are committed to the transformation of those relations toward a more equal and more rights-respecting society. A transformative constitution is not merely a set of limits on state power but a positive project for social change, embedded in constitutional text and requiring active implementation by all branches of government and by the courts in particular.

The Indian Constitution, in its framers' vision, was intended as a transformative document. Ambedkar designed it not merely to establish democratic governance but to accomplish the social revolution that would free India from caste, from poverty, from the legacy of colonialism, and from the entrenched power structures that had oppressed the vast majority of the population for centuries. The combination of fundamental rights, directive principles, and the positive mandate for social transformation expressed in Article 17 (the abolition of untouchability), in the provisions for affirmative action, and in the explicit social and economic goals of the directive principles, all reflect a transformative constitutional vision.

The gap between this transformative vision and the reality of seven decades of Indian constitutional practice is the subject matter of this entire textbook. The intellectual question this chapter addresses is: what would it mean to take the transformative vision seriously in contemporary India, and what changes to the constitutional order would be required to realize it?

The first requirement is a judicial culture genuinely committed to transformative interpretation. South African constitutional courts, particularly under Chief Justice Chaskalson, developed a jurisprudential culture that took seriously the Constitution's transformative mandate: holding the state accountable for failure to realize socio-economic rights, reading civil and political rights in light of their socioeconomic dimensions, and treating the Constitution's historical context of apartheid and its consequences as a relevant consideration in interpreting rights claims. Indian courts have at times approached this standard: the right to food jurisprudence in the PUCL case, the early public interest litigation cases on the right to livelihood, and the expansive reading of Article 21 all represent moments of transformative judicial vision. But these moments have not accumulated into a consistent jurisprudential culture: they have been interspersed with periods of deference, delay, and politically motivated restraint.

The second requirement is a legislative commitment to implementation that goes beyond the production of formal rights legislation. The cycle of Rights Acts, the Right to Education Act, the Right to Food (National Food Security Act), the Forest Rights Act, the Domestic Violence Act, and many others, demonstrates that India is capable of producing impressive rights legislation. The gap between legislation and implementation is the critical problem. This gap is partly a function of administrative capacity and resources, but it is also a function of political will. The Forest Rights Act, for instance, was designed to recognize and protect the customary rights of Adivasi forest communities. Its implementation has been systematically subverted by state forest departments, mining companies, and local political interests that benefit from treating Adivasi forest land as available for commercial exploitation. Supreme Court orders to implement the Act have been routinely ignored.

The third requirement is the transformation of the institutions through which rights are enforced: the police, the bureaucracy, the courts at the lower level, and the National Human Rights Commission. The colonial police culture is the most urgent target. The Second Administrative Reforms Commission and the Supreme Court's directions in Prakash Singh v. Union of India (2006) both called for fundamental police reform, including the creation of independent police complaints authorities, the insulation of senior police officers from political transfers, and the reorganization of police forces to separate investigation from law and order functions. Implementation of these directions has been minimal. Police reform requires political will from state governments, which benefit from maintaining police forces responsive to their political direction, and therefore faces a structural conflict of interest barrier that academic recommendations and judicial directions alone cannot overcome.

The fourth requirement is fiscal transformation. A state cannot deliver rights without resources. India's public spending on education, health, social protection, and housing, as a percentage of GDP, is dramatically below what comparable economies allocate to these functions. The redistributive capacity of the tax system is severely limited by regressive indirect taxes, under-taxation of capital income and wealth, and an informal economy that generates economic activity without generating tax revenue. The construction of a genuinely rights-respecting state in India would require a substantial increase in public revenue, directed toward the provision of the minimum conditions of a dignified life for all citizens.

5.2 Transitional Justice Mechanisms and the Indian Context

Transitional justice refers to the set of measures that societies use to address the legacy of past human rights violations and to build a foundation for a more just future. Developed primarily in the context of post-authoritarian or post-conflict transitions, transitional justice theory includes criminal prosecutions, truth commissions, reparations programs, institutional reform, and memorialization.

The application of transitional justice frameworks to India is unconventional because India has never formally transitioned from an authoritarian or conflict state. It has been continuously democratic, in the formal sense of holding regular elections and maintaining constitutional institutions, throughout its post-independence period. The violations this textbook has documented have occurred within a formally democratic framework. This creates a distinctive challenge for transitional justice theory: how does a society address systematic violations that have occurred within, and been enabled by, formally democratic institutions?

Ruti Teitel's concept of "transitional jurisprudence," developed in "Transitional Justice" (2000) and her subsequent work, offers a framework. Teitel argues that transitional justice is not confined to situations of formal political transition; it applies whenever a society seeks to confront and address the legacy of systematic violation and to construct a different kind of legal and political order. The relevant question is not whether a formal transition has occurred but whether there is a political and social commitment to confronting the legacy of violation and building differently.

In the Indian context, this framework suggests that genuine constitutional transformation would need to include a truth and justice process for the violations of the colonial period and its legacy in the post-independence security state; a specific acknowledgment and accountability process for the violations in Jammu and Kashmir, including the enforced disappearances documented by the APDP; acknowledgment of and accountability for the 2002 Gujarat riots and other episodes of mass communal violence; a comprehensive program of reparations for the victims of the Bhima Koregaon detention campaign and comparable abuses; and institutional reform of the police, the security forces, and the regulatory apparatus.

The practical political obstacles to any such process are currently formidable. The ruling government is institutionally identified with some of the violations that would be subject to such a process, including the 2002 Gujarat riots in which then-Chief Minister Modi's government has been widely accused of complicity. The cultural nationalist framework within which the government operates is constitutively committed to a narrative of Hindu civilization in which the violations that would need to be confronted are either denied, minimized, or justified as defensive responses to minority threat. The transformation of this political environment is a precondition for genuine transitional justice, and that transformation requires either an electoral defeat of the current political project or an internal transformation of Indian politics that dislodges the Hindutva framework from its dominant position.

Despite these obstacles, there are important ongoing processes that prefigure elements of a transitional justice approach. The Peoples' Tribunal on Human Rights Violations, organized periodically by civil society organizations, has created evidentiary records of violations and provided public platforms for the testimony of survivors. The work of organizations like the Association of Parents of Disappeared Persons in Kashmir, the Coordination of Democratic Rights Organisations, the Peoples' Union for Democratic Rights, and many others has maintained institutional memory of violations and created organized communities of survivors and advocates. These processes are not formal transitional justice mechanisms, but they are building the evidentiary and organizational foundation from which a formal process could eventually develop.

5.3 Constitutional Amendment and the Limits of Legal Reform

The question of constitutional amendment raises fundamental questions about the relationship between law and politics in a system undergoing backsliding. The Indian Constitution's amendment procedure under Article 368 requires a two-thirds majority in both Houses of Parliament and, for certain provisions, ratification by a majority of state legislatures. This is a qualified majority requirement designed to ensure that constitutional amendments reflect broad consensus rather than bare majoritarian will.

The BJP-led NDA has generally not had the supermajority required for constitutional amendment, which has meant that the most egregious legal changes of the Modi era have been accomplished through ordinary legislation (the CAA, the UAPA amendments), executive action (the abrogation of Article 370), and interpretation (the judicial reinterpretation of UAPA bail provisions). But the ambition of the Hindutva project includes constitutional amendments that would require supermajorities: the establishment of a Uniform Civil Code, which would abolish

the personal law systems of different religious communities; constitutional changes to facilitate the building of Hindu temples on disputed religious sites; and potentially amendments to alter the Preamble's reference to secularism.

The Preamble's inclusion of "secularism" is itself a contested constitutional provision. It was inserted by the Forty-Second Amendment during the Emergency in 1976, a constitutionally dubious circumstance that has been used as a ground for arguing that it should be reconsidered. Hindu nationalist scholars and politicians have argued that "secularism" was not in the original Preamble and is not a genuine expression of Indian constitutional values; some have proposed returning to what they describe as the "original" Preamble without the secularism and socialism amendments. This argument, which requires ignoring the authentic constitutional history that shows secularism as a fundamental principle even before the 1976 amendment, is part of the broader intellectual project of legitimizing the replacement of India's constitutional secularism with a majoritarian Hindu nationalism.

The Granville Austin analysis of the Indian Constitution as based on three strands, a unified nation, democratic self-government, and social revolution, is helpful here. Each of these strands is potentially in tension with the others, and the tensions have been managed through constitutional interpretation and political practice over seven decades. The Hindutva project attacks all three strands simultaneously: it defines the "unified nation" in terms that exclude Muslims and other minorities, it uses democratic self-government to implement majoritarian policies that undermine the rights of minorities, and it substitutes the promotion of Hindu cultural hegemony for the social revolution that was Ambedkar's central constitutional commitment. The constitutional transformation required to restore the integrity of the Indian constitutional order is therefore not merely a matter of specific amendments but of the recovery of the foundational constitutional commitments that the current political project is systematically eroding.

5.4 The Role of Federalism in Human Rights Protection and Violation

India's federal structure, while often analyzed primarily in terms of center-state relations in the domains of legislation, taxation, and administration, has significant human rights implications that deserve specific attention in this final part of the textbook.

The fundamental federal bargain in the Indian Constitution allocates legislative competence between the Union and the states through three lists: the Union List, the State List, and the Concurrent List. Law and order, which is the principal domain through which most routine human rights violations occur, is a state subject. This means that the conduct of the police, which is the institution most directly involved in custodial torture, arbitrary detention, extrajudicial violence, and the suppression of protest, is primarily the responsibility of state governments.

This has both positive and negative implications for human rights. Positive, because it means that state governments that are committed to rights protection can implement genuinely different approaches to policing and criminal justice within their jurisdictions. The historical differences between BJP-governed states and opposition-governed states in their treatment of minority communities, their willingness to demolish Muslim properties, and their use of security law

against political opponents suggest that the state-level variation matters enormously for the lived human rights experience of people in different parts of India. The Human Rights Watch documentation of opposition-governed states performing better on various human rights indicators confirms that the federal structure creates space for meaningful variation.

Negative, because when state governments are themselves the primary perpetrators of violations, the federal structure limits the Union government's ability and (under the current government) willingness to intervene. Article 356, the President's Rule provision, could in theory be used to remove a state government that is systematically violating human rights, but the Supreme Court's decision in S.R. Bommai (1994) introduced judicial review standards that have limited its misuse for partisan purposes. And in any event, the current Union government is aligned with the BJP state governments that are the primary perpetrators of demolitions, anti-conversion law enforcement, and FCRA targeting of civil society.

The concurrent list includes criminal law and criminal procedure, which means that the new criminal codes, the BNS, BNSS, and BSA of 2023, apply uniformly across the country. This centralization of criminal law, which has been presented as a modernization and rationalization of the legal system, also represents a centralization of the tools of political repression. The new criminal codes maintain most of the provisions that have been used to suppress dissent, add new provisions that potentially expand surveillance and investigative powers, and in some respects worsen protections against custodial abuse despite the rhetoric of reform surrounding their introduction.

The analysis of federalism and human rights in India also includes the specific case of the disturbed areas and the role of the Union government in maintaining the security state in the northeast and in Kashmir. AFSPA is a Union legislation, applied by the Union government on the recommendation of state governments but ultimately controlled by the center. The decision to maintain or lift AFSPA is a Union decision. The failure to act on the recommendations of the Jeevan Reddy Committee (2005), the Supreme Court's EEVFAM directions (2016), and multiple UN treaty body recommendations to repeal AFSPA is a Union failure. The federal argument that this is a matter for the states concerned is constitutionally disingenuous: AFSPA's continued application in the northeast is maintained by the Union government over the opposition of civil society and, in some cases, elected state governments that have repeatedly called for the law's repeal.

CHAPTER SIX: THE THEORETICAL SYNTHESIS: JUSTICE, POWER, AND THE FUTURE

6.1 The Moral Weight of Systematic Violation

The entire project of this fifteen-part textbook rests on a set of foundational moral and philosophical commitments that this final chapter must make explicit. The first commitment is to the claim that the systematic violation of human rights is among the most serious moral wrongs that states can commit. This claim requires philosophical defense, because it is contested,

particularly from two directions: the relativist direction (different cultures have different values, and therefore universal human rights standards impose one culture's values on others), and the consequentialist direction (the outcomes of particular security policies, however harsh their methods, must be evaluated by their results in terms of lives saved and security achieved).

The relativist challenge has been engaged throughout this textbook, and particularly in Chapter One. It is worth restating the core response here: the cultural relativist challenge to universal human rights standards is most powerful when it is made by the oppressed against the cultural imperialism of the powerful, and weakest when it is made by the powerful on behalf of a culture they control against the rights claims of those who are oppressed within that culture. When the Indian government invokes Indian cultural values to deflect criticism of its treatment of Dalits, Muslims, and Kashmiris, it is invoking a culture defined and controlled by dominant groups to protect the interests of those groups against the rights claims of subordinate groups who are very much part of that culture and whose perspectives are systematically excluded from the "cultural values" the government claims to be defending.

The consequentialist challenge requires a different response. The argument that AFSPA, the UAPA, the PSA, and other security law instruments are justified by the security they provide fails on its own terms. The systematic violence of counterinsurgency in Kashmir generated the conditions of alienation that sustained the insurgency; the torture and arbitrary detention used as counterinsurgency tools created new recruits for the very groups they were supposed to suppress; the abrogation of Article 370, far from resolving the political conflict, has intensified it, as evidenced by the April 2025 Pahalgam attack and the subsequent armed confrontation. The counterinsurgency logic is empirically self-defeating: it does not, in the long run, produce the security it promises. At the same time, it does, with mathematical certainty, produce the specific violations it inflicts on specific individuals, the disappearance, the torture, the extrajudicial killing, the years of detention without trial.

The philosophical framework most adequate to this dual analysis is what Seana Shiffrin calls the "accommodation of claims": the recognition that rights claims are not merely expressions of the interests of rights-holders but expressions of the special moral status that attaches to persons as autonomous, self-determining beings whose dignity must be respected as an end in itself, not merely instrumentalized for aggregate welfare calculations. Immanuel Kant's second formulation of the categorical imperative, to treat humanity, whether in one's own person or in that of another, always as an end and never as a means only, is the classical statement of this view. When the Indian state tortures a detainee to extract information, it uses that person as a means. When it detains a journalist without charge to prevent reporting it finds inconvenient, it uses that person as a means. When it demolishes a Muslim family's home to signal the dominance of a majoritarian political project, it uses those people as means. These violations are not justified by any consequentialist calculation because the moral status of the persons violated cannot be traded off against aggregate benefits. Rights are side constraints, in Robert Nozick's terminology: they limit what the state may do in pursuit of collective goals, however legitimate those goals.

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6.2 The Concept of Complicity: International Actors and Shared Responsibility

The international dimension of India's human rights crisis requires a final philosophical reckoning with the concept of complicity. Complicity in wrongdoing is the participation of one agent in the wrongdoing of another, in a way that contributes to or facilitates the wrong. The international actors who have deepened their "security, economic, and trade ties with India" despite its "deteriorating human rights record," as documented in the HRW World Report 2026, are complicit in that deterioration to the extent that their engagement supports the continuation of the policies and practices that constitute it.

The philosophical literature on complicity is rich and contested. Christopher Kutz's work "Complicity: Ethics and Law for a Collective Age" (2000) identifies multiple forms of complicity that extend beyond direct participation in a wrong: facilitative complicity (providing resources or assistance that enable the wrong), cooperative complicity (acting jointly with the primary wrongdoer), and expressive complicity (lending legitimacy or approval to the wrong). All three forms are evident in the international engagement with India under the Modi government. States that sell arms to India while it maintains AFSPA in Kashmir are facilitatively complicit in the potential use of those arms in extrajudicial killings. States that deepen strategic partnerships with India without raising human rights concerns as conditions of cooperation are cooperatively complicit in the political legitimation of the policies that sustain those violations. States and international organizations that welcome India as a partner in governance of the international order, including through its Human Rights Council membership, are expressively complicit in the normalization of its human rights record as acceptable.

The theoretical challenge is to move from philosophical complicity analysis to legal and political consequence. States that are complicit in human rights violations bear a corresponding responsibility to use the tools available to them to bring those violations to an end. This does not necessarily mean coercive international action; it means, at a minimum, consistent and principled human rights conditionality in the terms of bilateral relationships, unambiguous public statements that name violations clearly, support for international accountability mechanisms rather than protection from them, and the maintenance of trade and investment relationships in ways that do not specifically benefit the economic interests most closely aligned with the violating government.

The United States, which since 2020 has deepened its strategic, economic, and military partnership with India under both the Trump and Biden administrations, and which since 2024 has maintained this deepening under a second Trump term more focused on the geopolitical competition with China than on human rights in South Asia, has perhaps the most significant complicity responsibility of any state outside India. The US Commission on International Religious Freedom (USCIRF) has since 2020 recommended that India be designated a "Country of Particular Concern" under the International Religious Freedom Act for "engagement and facilitation of systematic, ongoing, and egregious violations of religious freedom." This recommendation has been consistently not implemented by successive State Departments. The gap between the USCIRF's finding and the State Department's action is a measure of how completely geopolitical calculation has displaced human rights concern in US policy toward India.

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6.3 The Theory of Hope: Social Movements, Legal Resistance, and the Long Arc

The jurisprudential, philosophical, and political analysis developed across fifteen parts of this textbook has been deeply critical, because the evidence demands criticism and the people who bear the costs of violation deserve honest analysis rather than diplomatic circumlocution. But a jurisprudential textbook that ends only in condemnation would be incomplete, not because the condemnation is unearned but because human beings have never been only the objects of power. They have also been, consistently and courageously, the subjects of resistance.

The history of human rights progress is, in significant part, a history of social movements that have forced the recognition of rights that established power denied. The American civil rights movement, the anti-apartheid movement in South Africa, the women's suffrage movements of the late nineteenth and early twentieth centuries, the labor movements that established workers' rights against the opposition of industrial capital, all demonstrated that systematic violations of human dignity, however institutionalized and however long-standing, are not permanent. They are susceptible to organized resistance, to moral argument, to legal challenge, and to political transformation.

India has a long and rich tradition of social movement resistance to structural oppression. Ambedkar's organization of Dalit resistance to caste discrimination, the trade union movements of the colonial and post-colonial periods, the women's movements that have transformed legislation on dowry, domestic violence, sexual harassment, and marital rape, the environmental movements that have challenged large dam projects and mining companies, the farmers' movements that have resisted market reforms perceived as threatening their livelihoods, all of these demonstrate the vitality and persistence of social movement politics in India despite the extraordinary structural odds against the most marginalized.

The farmers' protest of 2020-2021, which mobilized millions of farmers, overwhelmingly from Punjab and Haryana, in sustained protest against the Modi government's agricultural reform legislation, resulted in the remarkable achievement of the government's withdrawal of the legislation in November 2021. This was one of the most significant social movement victories in recent Indian history, and it demonstrated that sustained, organized, non-violent civil resistance can still achieve policy change even against a government with an overwhelming parliamentary majority and a powerful ideological apparatus behind it.

The anti-CAA protests of December 2019 through February 2020, which mobilized millions of people across India in sustained, peaceful protest against the Citizenship Amendment Act, similarly demonstrated the continued vitality of constitutional resistance. The protests, which drew enormous participation from Muslim women in particular, including the famous Shaheen Bagh sit-in in Delhi, represented a direct and principled assertion of constitutional values against what protesters correctly identified as the act's violation of the secular constitutional compact. The violent suppression of protests in Delhi in February 2020, in which at least 53 people were killed and the principal prosecutorial response was directed at Muslim protesters and civil society leaders rather than at those who instigated and carried out the violence, demonstrated both the state's willingness to use force against peaceful constitutional resistance and the resilience of that resistance in the face of force.

The legal resistance dimension is equally important. Despite the Supreme Court's overall pattern of executive deference in politically sensitive cases, individual judges and lawyers have continued to file challenges, argue cases, and occasionally win. The Anuradha Bhasin judgment on internet shutdowns was a significant rights victory, however imperfectly implemented. The ADM Jabalpur overruling in Puttaswamy (Justice K.S. Puttaswamy v. Union of India, 2017), in which the Supreme Court unanimously recognized privacy as a fundamental right and explicitly overruled the Emergency-era capitulation, was one of the most important constitutional judgments in years. The Navtej Singh Johar judgment of 2018, which decriminalized consensual same-sex sexual activity, represented a significant breakthrough for LGBTQ+ rights, however much the subsequent Supriyo v. Union of India judgment of 2023 disappointed those who had hoped for a judicial recognition of the right to same-sex marriage.

The grassroots human rights documentation work of organizations like the People's Union for Civil Liberties, the People's Union for Democratic Rights, the Coordination of Democratic Rights Organisations, the Association of Parents of Disappeared Persons, the Dalit Arthashastra, Jan Satyagrah, Nirantar, and hundreds of others has maintained, despite the systematic targeting of these organizations through FCRA, UAPA, and financial investigations, the institutional infrastructure of civil society accountability. The evidentiary record these organizations have created, of violations documented, testimonies recorded, cases filed, and accountability demanded, is an inheritance that future political conditions may allow to be translated into formal justice processes.

6.4 International Law at a Crossroads: The Indian Case as a Test of the System

The broader significance of India's human rights crisis extends beyond India itself. India is the world's most populous country, the world's largest democracy in formal terms, a major economic power, a nuclear-armed state, and a permanent candidate for a Security Council seat. What happens to the international human rights system when a state of this scale and significance systematically violates its international obligations while performing participation in the international system's accountability mechanisms?

The theoretical stakes are enormous. If the international human rights system cannot find effective responses to systematic violations by major powers, it risks the progressive erosion of the norms it is supposed to enforce. The norm against torture, the norm against arbitrary detention, the norm against extrajudicial killing, the norm of non-discrimination in the enjoyment of civil and political rights: all of these are weakened when a major state can violate them systematically and face only the consequence of critical reports from monitoring bodies that it publicly dismisses.

The legal philosopher Philippe Sands, in his work "East West Street" and subsequent lectures, has argued that the international law of human rights represents humanity's most significant post-Second World War achievement: the construction of a framework that treats the way states treat their own citizens as a matter of legitimate international concern rather than exclusively domestic sovereignty. This achievement is real but fragile. It depends for its continued vitality on the consistent application of its principles to all states, not merely weak or friendless states, and on

the willingness of powerful states to submit to its discipline as well as to invoke it against adversaries.

The Indian government's consistent use of the "Asian values" and "sovereignty" arguments to deflect human rights criticism, when combined with its use of UN Human Rights Council membership as a shield rather than a commitment, represents a sophisticated attack on the universality principle at the heart of international human rights law. If the argument succeeds, if the international community accepts that states can pick and choose which human rights obligations apply to them based on their cultural and civilizational particularity, the entire framework of universal human rights law begins to dissolve into a political instrument rather than a legal order.

The counter-argument, which this textbook has consistently developed, is that the universality principle is not cultural imperialism but is itself a form of protection for the most vulnerable: those who are oppressed by the dominant culture of the society in which they live and who can appeal only to universal standards against the particular cultural norms that their oppressors invoke as justification. The Dalit woman who is raped by a police officer from a higher caste, the Kashmiri journalist detained without charge under the PSA, the Muslim family whose home is demolished in the name of urban development: none of these people benefits from the cultural particularity argument. All of them depend on universal standards for the only institutional support available to them outside the national system that is itself the instrument of their oppression.

6.5 The Philosophical Horizon: Justice, Dignity, and the Claim of the Other

This textbook has engaged throughout with the philosophical traditions that theorize human rights: natural law theory, legal positivism, Rawlsian contractualism, postcolonial jurisprudence, feminist relational theory, critical legal studies, and the structural violence tradition. In this concluding section, the final philosophical synthesis draws on Emmanuel Levinas's ethics of the Other, which provides perhaps the deepest philosophical grounding for the unconditional demand of human rights.

Levinas, the Lithuanian-born French philosopher who survived the Holocaust and spent his career developing an ethical philosophy centered on the radical primacy of the other person, argued that ethics is not primarily a matter of principles, rules, or calculations, but of the encounter with the face of the other. The "face" in Levinas's philosophy is not simply the physical face of another person but what he calls the "nakedness and destitution" of the other's vulnerability, the call that the other's existence makes on my responsibility. The face says "do not kill me," and this prohibition, Levinas argues, is prior to and more fundamental than any political or legal order. It is the foundation of all genuine ethics.

The significance of Levinas for human rights philosophy is that it grounds rights not in abstract principles but in the concrete encounter with suffering and vulnerability. When Father Stan Swamy, eighty-three years old and suffering from Parkinson's disease, asked through his lawyers for a sipper cup to drink water in prison, and was denied, the question his request posed was not primarily a legal question about prison regulations. It was an ethical question about the face of

the other: can one look at this suffering person and not respond with care? When Kashmiri families whose sons and daughters have disappeared for twenty, twenty-five, thirty years hold photographs and ask where their children are, the question is not primarily political. It is the Levinasian ethical demand at its most acute.

What Levinas adds to the philosophical analysis is the claim that ethics is not optional, that we cannot simply choose to be indifferent to the face of the other without destroying something essential in ourselves as ethical beings. The political consequence is that a state which systematically ignores the face of the other, which organizes itself to be indifferent to the suffering it inflicts on Dalits, Muslims, Kashmiris, Adivasis, and the poor, is not merely a state that is violating legal norms. It is a state that is corrupting its own moral foundation, that is producing a political culture of systematic indifference to suffering that will ultimately consume the dignity of those within it, majority or minority, perpetrator or bystander.

Martha Nussbaum's capabilities approach, which has been influential throughout the political philosophy of human rights in the twenty-first century, provides the bridge from Levinas's philosophical ethics to the specific normative content of human rights claims. Nussbaum argues that a just society must ensure that all its members have access to a set of central human capabilities: life; bodily health; bodily integrity; the senses, imagination, and thought; the emotions; practical reason; affiliation; other species; play; and control over one's political and material environment. A society that fails to ensure any of these capabilities for any of its members has failed a fundamental obligation of justice, regardless of how it performs on aggregate welfare metrics.

The Indian state, assessed against Nussbaum's capabilities framework, fails catastrophically for its most vulnerable populations. Dalit communities in rural India are systematically denied bodily integrity through the continuing practice of caste-based violence, sexual violence against Dalit women, and the physical enforcement of caste hierarchy in daily life. Kashmiri communities are denied control over their political and material environment through the combination of military occupation, arbitrary detention, and the abrogation of the special status that represented their minimal constitutionally guaranteed political autonomy. Muslim communities across the country are denied the capability of affiliation, the ability to live in dignity and security within their own communities and to participate fully in the public life of a society that treats them as suspects rather than citizens. Adivasi communities are denied control over the material environment through the systematic appropriation of their ancestral lands for commercial extraction. Women across all communities are denied bodily integrity through the pervasive reality of sexual violence and domestic violence, and are denied political and social equality through deeply entrenched gender hierarchies that the state has failed to systematically challenge.

6.6 The Specific Recommendations: What Must Change

This final section of the textbook moves from philosophical analysis to specific recommendations, organized around the three levels at which change is required: the international level, the constitutional and legal level within India, and the level of institutional culture and practice.

At the international level, the first and most urgent requirement is a strengthening of the accountability mechanisms of the UN human rights system in relation to India. This means the Human Rights Council establishing a specific country mechanism for India, analogous to the mechanisms established for Sri Lanka, Myanmar, and other countries with serious and systematic violations. Given the political dynamics of the Council, this would require a campaign led by a coalition of states committed to the universality of human rights norms, including European states that have been too deferential to strategic and economic considerations in their India relationships, together with states from the Global South whose human rights credentials are genuine, including South Africa, Costa Rica, and others.

The second international requirement is the conditioning of arms sales and military cooperation with India on demonstrated progress in specific, measurable human rights areas: the repeal or fundamental amendment of AFSPA, the amendment of the UAPA bail provisions to bring them into conformity with the ICCPR, the restoration of full internet access and civil society freedom in Jammu and Kashmir, and the implementation of the D.K. Basu guidelines on custodial torture across all states. These conditions should be formal components of defense and security cooperation agreements rather than voluntary aspirational goals.

The third international requirement is the support of diaspora communities, international civil society organizations, and foreign legal systems in maintaining the accountability processes that India's domestic system has suppressed. The prosecution in Canada of individuals allegedly involved in the killing of Hardeep Singh Nijjar is one example of how foreign legal systems can create accountability consequences for Indian state actors in ways that the Indian system will not. The documentation work of international human rights organizations, the continued engagement of UN Special Rapporteurs, and the work of diaspora human rights organizations all form essential parts of the accountability ecosystem.

At the constitutional and legal level within India, the most urgent requirements include the repeal of AFSPA and the PSA and their replacement with narrowly tailored security legislation with genuine judicial oversight and accountability mechanisms. The amendment of the UAPA to restore the presumption of innocence in bail proceedings, to require disclosure of the grounds of designation as a terrorist organization or individual to the person concerned, and to establish an independent review mechanism for such designations. The fundamental reform of the FCRA to eliminate its use as a tool of civil society suppression, replacing it with a genuinely narrow regulation of foreign funding that targets actual foreign interference in political processes rather than all foreign-funded human rights work. The enactment of a comprehensive torture prevention and accountability law, including the ratification of the Convention Against Torture. The implementation of the Prakash Singh police reform directions through constitutional amendment if necessary to make police accountability structures mandatory across all states.

The judicial reform requirements are equally urgent but structurally more difficult because they go to the process through which judges are appointed and the culture within which they develop as lawyers and judges. The collegium system, which gives sitting Supreme Court judges the primary role in appointing their successors and the high courts, has been criticized as creating a closed, self-reproducing legal elite inadequately connected to the lived experience of India's most marginalized communities. A more transparent, more diverse, and more publicly accountable

appointment process would improve the likelihood that the judiciary reflects the full range of Indian legal talent and values rather than the specific social location and professional culture of the elite bar.

At the level of institutional culture and practice, the requirements are both deeper and harder to specify as legal recommendations. The transformation of police culture from a colonial, order-maintenance orientation to a citizen-service orientation requires sustained investment in training, in changing the metrics by which police performance is evaluated, and in creating institutional incentives for rights-respecting conduct rather than for the production of arrests and confessions. The transformation of the culture of impunity for custodial violence requires not merely legal accountability mechanisms but a genuine change in the social and institutional norms that currently treat custodial violence as an acceptable, even necessary, tool of law enforcement.

The transformation of educational and cultural institutions is equally fundamental. A constitutional democracy cannot function as one if its citizens are not educated in the values and principles that make it constitutional and democratic. The systematic distortion of historical education under the Hindu nationalist agenda, replacing evidence-based historical scholarship with ideologically motivated narratives that glorify the Hindu past and denigrate Muslim and colonial history, is an attack on the epistemic foundations of democratic citizenship. Genuine civic education, teaching students to understand the Constitution's values, to engage with historical evidence, to think critically about political claims, and to recognize and resist the manipulation of collective identity for political purposes, is a prerequisite for the kind of democratic culture that can sustain rights.

6.7 The Horizon of Justice and the Burden of History

This textbook has been, throughout its fifteen parts, a work of mourning as much as analysis. It has mourned the gap between the extraordinary constitutional promise of the Indian republic and the catastrophic reality of its delivery for hundreds of millions of the most vulnerable. It has mourned the deaths of Father Stan Swamy, of Rohith Vemula, of the thousands killed in communal violence, of the hundreds killed in fake encounters, of the children who have died of malnutrition in a country with surplus food grain stocks. It has mourned the lives diminished by caste discrimination, by religious persecution, by gendered violence, by economic deprivation, by the slow grinding down of human potential that systematic structural oppression accomplishes across generations.

But mourning without hope is only half of the ethical response that the Levinasian face of the other demands. The face of the other demands not merely acknowledgment of suffering but commitment to action, to the construction of the conditions in which suffering is no longer systematically produced. The commitment to this construction is the commitment to justice.

The theory of justice that best captures this commitment in the Indian context is not any single philosophical theory but the convergent insight of multiple traditions: that every person, regardless of caste, religion, gender, class, ethnicity, or geography, has a dignity that must be respected as an end and not merely as an instrument; that the state exists to serve persons and not to use them; that the law is legitimate only when it operates in the service of human flourishing

rather than in the service of the powerful; and that the responsibility for building a just social order falls not only on those who hold formal political power but on all persons and institutions that participate in and benefit from the existing order.

This responsibility falls with particular weight on those who have the capacity and the resources to act: on lawyers and judges who can use the tools of legal argument to protect rights and challenge violations; on journalists and academics who can document violations and subject them to analytical scrutiny; on civil society organizations that can organize the most marginalized to advocate for their own rights; on international institutions that can maintain accountability standards and create consequences for systematic violation; and on democratic publics in India and abroad who can make the political choices that determine which governments hold power and what purposes they serve.

The case of India demonstrates with painful clarity that none of these actors has fully met this responsibility. The lawyers who have courageously challenged UAPA detentions, filed habeas corpus petitions in Kashmir, documented violations for public interest litigation, and represented the most marginalized defendants deserve recognition; the many who have not, who have used their skills in the service of the powerful rather than the powerless, share responsibility for the outcomes that result. The judges who have issued landmark decisions protecting rights in difficult circumstances deserve recognition; those who have deferred to the executive in constitutionally critical cases at the cost of the rights of the detained and the persecuted bear responsibility for those costs. The civil society organizations that have maintained their work under conditions of systematic harassment and financial strangulation deserve recognition; the complicit silence of much of India's established civil and political society in the face of the systematic erosion of constitutional values carries its own moral weight.

The international human rights system has developed since 1945 as the answer to a question posed by the catastrophe of the Second World War: what would it take for the international community to prevent, or at least not be complicit in, the systematic destruction of human beings by states? The answer has been: a framework of international norms, institutions, monitoring mechanisms, and accountability procedures that makes systematic violation costly, that creates records for future accountability, and that keeps alive the moral and legal standards against which violations can be measured. This framework has achieved real things: it has saved lives, it has created space for civil society, it has provided leverage for social movements, it has established the evidentiary record from which eventual justice can be constructed.

But the framework is under profound stress. The rise of nationalist populism across multiple major states, the increasing tendency of powerful states to use the language of sovereignty to shield themselves and their allies from accountability, the erosion of the institutional capacities of international organizations, the weaponization of "cultural values" arguments against universal standards: all of these represent challenges to the international human rights framework that are at least as serious as any threat it has faced since its establishment.

The Indian case, which this textbook has examined in exhaustive detail, is a paradigm of this stress: a major state, formally committed to the international human rights system and possessing one of the world's most impressive constitutional rights frameworks, that systematically violates

both its international and its constitutional commitments through a sophisticated combination of legal form and political reality, that uses international institutions as platforms for legitimation while resisting their accountability functions, and that is able to do so with minimal effective consequence because its geopolitical importance to major powers outweighs, in the political calculations of those powers, the human rights of its most marginalized citizens and its smaller neighbors.

The response to this paradigm cannot be mere academic analysis, however rigorous. It must also be political, legal, and moral: a sustained commitment by all those within the reach of this textbook's argument to use every available tool, in every available arena, to insist on the dignity of every person affected by India's systematic violations, to demand accountability from every institution in a position to provide it, and to work toward the construction of a social and political order, in India and in the international system, in which systematic violations of this kind are prevented rather than merely documented.

That is the claim this textbook has been building toward across its fifteen parts. It is a claim about what justice demands: not diplomatic courtesy, not the comfortable balance of competing considerations, not the patient waiting for political conditions to improve on their own, but the urgent, insistent, and morally serious demand that the dignity of every person be recognized, protected, and enforced, here, now, and without exception.

CONCLUSION: THE RECKONING CONTINUES

The fifteen parts of this textbook have traversed a vast terrain of law, history, philosophy, politics, and human experience. They have examined the theoretical foundations of human rights and their particular expression in the Indian constitutional framework. They have analyzed the historical roots of the current crisis in colonialism, partition, and the formation of the Indian security state. They have dissected the constitutional architecture that simultaneously promises and subverts rights. They have examined specific domains of violation with the depth that each demands: Kashmir, caste, gender, religion, economic rights, civil society freedom, the rights of indigenous communities, the treatment of prisoners, the suppression of free expression, the weaponization of law against defenders of law. They have evaluated India's conduct as a regional hegemon and its relationship to the international system.

The cumulative picture is one of extraordinary complexity and extraordinary severity. India is not a simple case. It is a genuine democracy in many of its features, with real elections, real courts, real civil society, real press freedom for some, real universities, real independent scholars, real activists, real resistance. The systematic violations documented here coexist with these democratic realities, and their coexistence is part of what makes India's human rights crisis so difficult to address: it cannot be reduced to the simple story of an authoritarian state suppressing an oppressed population, though elements of that story are real. It must be engaged as the more complex story of a democratic system that has been systematically captured by a majoritarian nationalist project that uses democratic procedures to undermine democratic and constitutional values.

The people who bear the weight of this system, Dalit women in rural Rajasthan, Kashmiri journalists in solitary confinement under the PSA, Adivasi farmers whose ancestral lands have been seized for coal mines, Muslim families in Ahmedabad whose homes have been demolished, Christian pastors in Uttar Pradesh facing anti-conversion charges, Manipuri Kuki-Zo women who were subjected to mass sexual violence, all of these people have names, faces, and life histories that no academic text can fully honor. What this text can do, and what it has attempted to do throughout its fifteen parts, is to ensure that the systemic forces that produce their suffering are understood as clearly as possible, analyzed as rigorously as possible, and confronted as honestly as possible.

The reckoning this textbook demands does not end with its final pages. It continues in every courtroom where a UAPA bail application is filed, in every international human rights report that documents another demolition, in every parliamentary debate that raises the question of police accountability, in every student protest that demands a more just society, in every community meeting where Dalit farmers organize to demand their land rights. The textbook is a contribution to this ongoing reckoning, not its conclusion.

The claim on which the entire project rests is simple, foundational, and demands repetition: every human being, without exception and without qualification, possesses a dignity that must be respected as an end in itself and never as a means only. This dignity is not contingent on one's religion, caste, nationality, gender, sexual orientation, or political opinion. It is not contingent on the approval of a majority, the decision of a legislature, or the assessment of a court. It is the starting point of all ethics, the foundation of all genuine law, and the irreducible demand of every face that looks to us for recognition.

India's human rights crisis is, at its root, a crisis of recognition: the systematic failure of the state and the dominant social majority to recognize the full humanity and dignity of millions of their fellow human beings. The resolution of this crisis requires not merely legal reform or institutional change, though both are urgently necessary, but a moral and cultural transformation: the genuine recognition, in practice and not merely in principle, that the Dalit girl in a government school deserves the same quality of education as the upper-caste boy in a private school, that the Kashmiri journalist imprisoned without charge deserves the same access to justice as the New Delhi lawyer arguing her case, that the Muslim family facing demolition deserves the same protection of property as the Hindu family living next door, and that the small neighbor state facing economic coercion deserves the same respect for sovereignty as the great power invoking sovereignty as its own shield.

This is what justice demands. And the demand of justice does not diminish with the passage of time or the accumulation of obstacles. It grows more urgent with every day that passes without its fulfillment, because with every day that passes another life is diminished, another dignity is violated, another person is reduced to bare life by a system that refuses to recognize their full humanity. The reckoning continues. And those who understand what is at stake have no choice but to continue it.

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GLOSSARY

- **Aadhaar:** A 12-digit unique identity number issued by the Indian government, linked to an individual's biometric and demographic data. It is used for availing various subsidies, benefits, and services.
- **Adivasi:** An umbrella term for the indigenous tribal peoples of India, officially designated as Scheduled Tribes.
- **AFSPA (Armed Forces Special Powers Act):** A law that grants special powers to armed forces in areas declared "disturbed," including immunity from prosecution for their actions without prior government sanction. It is a primary source of impunity for security forces.
- **Agamben, Giorgio:** An Italian philosopher known for his work on the "state of exception" and "bare life" (Homo Sacer). His theories are used in the text to analyze India's permanent security regime and the reduction of certain populations to a vulnerable state outside the law.
- **Ambedkar, B.R.:** The principal architect of the Indian Constitution. A social reformer, jurist, and Dalit rights activist who fought against caste discrimination.
- **Arendt, Hannah:** A 20th-century political theorist whose concept of the "right to have rights" is central to understanding statelessness and exclusion from political community.
- **Basic Structure Doctrine:** A judicial principle holding that certain fundamental features of the Constitution (e.g., democracy, secularism, federalism) cannot be altered or destroyed by Parliament through amendment. It is a cornerstone of constitutional protection.
- **Baxi, Upendra:** A distinguished Indian legal scholar and human rights theorist whose work critiques the political economy of human rights and emphasizes "suffering" as the starting point of analysis.
- **Brahmanical Patriarchy:** A theoretical concept describing how the caste system and patriarchal structures are interlocking systems. It explains the control over upper-caste women's sexuality to maintain caste purity and the vulnerability of Dalit women to sexual violence as a tool of caste dominance.
- **Boomerang Model (Keck and Sikkink):** A model of transnational advocacy where domestic NGOs that are blocked from accessing their own government "bounce" their claims to international allies, who then pressure the state from outside.
- **Capabilities Approach (Amartya Sen & Martha Nussbaum):** A normative framework for evaluating well-being and justice that focuses on what individuals are actually able to do and be (their capabilities), rather than on resources or utility alone.
- **Caste:** A rigid system of social stratification in India, determining social status, occupation, and social interaction by birth. It is a foundational structure of violence and discrimination.
- **CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women):** An international treaty often described as the international bill of rights for women.
- **Collegium System:** The system by which judges of the Supreme Court and High Courts are appointed, wherein a collegium of senior judges makes recommendations to the government. It is criticized for its opacity.
- **Collective Punishment:** Punishing an entire community for the actions of a few individuals. It is explicitly prohibited by international humanitarian law. The post-Pahalgam crackdown on Muslims is cited as a prime example.

- **Competitive Authoritarianism:** A political regime type where democratic institutions exist (elections, legislatures) but the incumbent party systematically abuses state resources and violates rules to tilt the playing field against the opposition.
- **Constitutional Morality (Ambedkar):** The principle that the rule of law and constitutional values must genuinely constrain political power, superseding the "popular morality" of the majority.
- **Custodial Torture/Killing:** Violence or death inflicted by state authorities (police, military, prison staff) on a person in their custody. The extreme prevalence of this in India is a major focus of the textbook.
- **Dalit:** A person belonging to the former "untouchable" castes, officially designated as a Scheduled Caste. The term means "broken" or "oppressed" and emphasizes a political identity of resistance.
- **Democratic Backsliding (or Erosion):** The gradual, incremental, and often legally-permissible process by which elected governments undermine the institutions and norms of democratic governance.
- **Directive Principles of State Policy (DPSP):** Guidelines to the central and state governments of India, to be kept in mind while framing laws and policies. They are fundamental to governance but are non-justiciable (not enforceable by courts).
- **Enforcement Directorate (ED):** India's financial investigation agency. The textbook documents its alleged misuse by the government to harass political opponents and civil society activists.
- **FCRA (Foreign Contribution Regulation Act):** A law regulating the receipt of foreign funds by Indian NGOs. The textbook argues it has been weaponized to suppress civil society by revoking licenses of organizations critical of the government.
- **Feminist Jurisprudence:** A legal theory that critiques law from a feminist perspective, arguing that it is not neutral but historically constructed from a male viewpoint, systematically disadvantaging women.
- **Foucault, Michel:** A French philosopher whose analysis of disciplinary power, the prison, and biopolitics is used to analyze India's carceral state and surveillance systems.
- **Global Torture Index (OMCT):** A global report measuring state compliance with the Convention against Torture. The 2025 Index classified India as a "high risk" country.
- **Gramsci, Antonio:** An Italian Marxist philosopher whose concept of "hegemony" (dominance through consent and ideology) is used to analyze India's regional power and the ideological dominance of Hindu nationalism.
- **Hindutva:** The dominant ideology of Hindu nationalism, which seeks to define Indian culture in terms of Hindu values and views religious minorities (especially Muslims and Christians) as not fully Indian.
- **Hydro-hegemony / Hydro-coercion:** The dominance of a state within a shared river basin, using control over water resources as a tool of political and economic coercion against downstream neighbors.
- **ICCPR (International Covenant on Civil and Political Rights):** The key international treaty protecting civil and political rights (e.g., right to life, freedom from torture, free speech).
- **ICESCR (International Covenant on Economic, Social and Cultural Rights):** The key international treaty protecting economic, social and cultural rights (e.g., right to food, health, housing, work).

- **Intersectionality:** A theoretical framework for understanding how aspects of a person's social and political identities (e.g., caste, gender, race, class) combine to create unique modes of discrimination and privilege.
- **Jus cogens:** Peremptory norms of international law that are binding on all states and from which no derogation is permitted (e.g., prohibition of torture, genocide).
- **Maoist/Naxalite:** A communist insurgency operating in the forested "Red Corridor" of central India. The government uses UAPA and security forces to conflate Adivasi rights activism with Maoist terrorism.
- **Minimum Core Obligations:** The concept in ICESCR jurisprudence that for each economic right, there is a non-negotiable, immediate minimum level that a state must provide, regardless of resource availability (e.g., ensuring no one starves).
- **NHRC (National Human Rights Commission of India):** The statutory body established to protect human rights, but which the textbook argues has become a compromised institution, leading to a "B" status downgrading recommendation.
- **Ninth Schedule:** A schedule to the Constitution that contains a list of laws immune from judicial review for violation of fundamental rights. It was created to protect land reform but has been abused.
- **Non-refoulement:** A fundamental principle of international law that prohibits a state from returning a person to a country where they face a real risk of persecution, torture, or serious harm.
- **Pahalgam Attack (2025):** A major terrorist attack in Kashmir that killed 26 tourists. The textbook analyzes the state's response (Operation Sindoor, mass arrests, demolitions) as a case study in collective punishment and the permanent state of exception.
- **Paris Principles:** International standards for the independence and effectiveness of national human rights institutions (like the NHRC).
- **PIL (Public Interest Litigation):** A legal mechanism allowing any citizen to approach the court to seek justice on behalf of those who cannot access the courts themselves. It was a revolutionary tool but has been criticized for misuse and judicial overreach.
- **Pogge, Thomas:** A political philosopher whose theory on "world poverty and human rights" argues that affluent states are complicit in global poverty by imposing unjust institutional arrangements.
- **POSH Act (Protection of Women from Sexual Harassment at Workplace Act):** An Indian law mandating that every workplace establish an Internal Complaints Committee to address sexual harassment complaints.
- **Postcolonial Jurisprudence:** A field of legal study that analyzes law from the perspective of the formerly colonized, focusing on the legacy of colonial legal structures and the critique of Eurocentric norms.
- **Proportionality Test:** A standard used in constitutional and international law to assess whether a restriction on a right is justified by weighing its importance against the severity of the infringement.
- **Rawls, John:** An American political philosopher whose theory of "justice as fairness" and the "veil of ignorance" is used to evaluate the inequality and discrimination inherent in the Indian social structure.
- **R2P (Responsibility to Protect):** A UN doctrine holding that states have a responsibility to protect their populations from mass atrocities, and if they fail, the international community has a responsibility to intervene.

- **SAARC (South Asian Association for Regional Cooperation):** The regional intergovernmental organization in South Asia. The textbook notes its failure due to India-Pakistan tensions and India's resistance to multilateral constraints.
- **Schmitt, Carl:** A German legal theorist known for his political theology and the concept that the "sovereign is he who decides on the exception." His work is used to critique India's permanent security regime.
- **Sedition Law (Section 124A):** A colonial-era law, now replaced by BNS Section 152, criminalizing speech that brings the government into contempt or incites disaffection. It has been widely used to silence dissent.
- **Structural Violence (Johan Galtung):** Violence that is built into the social, economic, and political structure, causing harm by preventing individuals from meeting their basic needs (e.g., through poverty, caste discrimination).
- **Transitional Justice:** A field of study and practice dealing with how societies address legacies of systematic human rights violations, using mechanisms like truth commissions, prosecutions, and reparations.
- **UAPA (Unlawful Activities Prevention Act):** The primary anti-terrorism law in India. The textbook documents its systematic misuse to imprison journalists, human rights defenders, and student activists for years without bail or trial.
- **Uniform Civil Code (UCC):** A proposed set of common personal laws (marriage, divorce, inheritance) applicable to all citizens regardless of religion.
- **Universal Periodic Review (UPR):** A UN Human Rights Council process where the human rights record of every UN member state is reviewed by other states.
- **Waqf:** A permanent, inalienable religious endowment in Islamic law, typically for charitable or religious purposes. The 2025 Waqf Amendment Act is analyzed as a form of state centralization and targeting of Muslim community assets.

Human Rights Violations in India

A CRITICAL JURISPRUDENTIAL TEXTBOOK

Human Rights Violations in India: A Critical Jurisprudential Textbook by S M Nazmuz Sakib is a comprehensive, fifteen-part analysis of India's systematic human rights crisis. The work moves beyond diplomatic compromise to argue that violations against Dalits, Muslims, Kashmiris, Adivasis, women, political dissidents, and economic underclasses are not aberrations but structural products of India's constitutional order, colonial inheritance, and the Hindu nationalist project under the Modi government.

The textbook integrates legal philosophy (natural law, legal positivism, critical theory, feminist jurisprudence), constitutional analysis (the basic structure doctrine, emergency powers, UAPA, AFSPA, FCRA, new criminal codes), and extensive empirical documentation including custodial torture, extrajudicial killings, communal violence, forced evictions, internet shutdowns, and transnational repression. It also examines India's regional hegemony through economic blockades, water weaponization, and border killings, as well as its selective engagement with international human rights mechanisms.

Concluding with a detailed reform agenda and a philosophical call for transformative justice, the book insists that the true measure of a legal system lies in the lived experience of its most vulnerable subjects.

ABOUT THE AUTHOR

S M Nazmuz Sakib is an interdisciplinary scholar, researcher and author bridging IT, business analytics, and applied research. He is a Fellow of the Scholars Academic and Scientific Society, a Member of IAENG, a lifetime member of BELTA, and a Bangladeshi Arena Grand Master (AGM) recognized by FIDE.

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